



MONTSERRAT

CHAPTER 11.01

SECURITIES ACT

Revised Edition

showing the law as at 1 January 2025

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

	Page
SECURITIES ACT	3
Act 4 of 2001 .. in force 1 January 2002 (S.R.O. 11/2002)	
Amended by Acts: 11 of 2005 .. in force 1 November 2005	
9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)	
SECURITIES (ADVERTISEMENTS) REGULATIONS – Section 175	119
S.R.O. 21/2002 .. in force 28 February 2002	
SECURITIES (PROSPECTUS) REGULATIONS – Section 175	127
S.R.O. 22/2002 .. in force 28 February 2002	
SECURITIES (LICENCES AND FEES) REGULATIONS - Section 175	139
S.R.O. 23/2002 .. in force 28 February 2002 (S.R.O. 37/2003)	
SECURITIES (CONDUCT OF BUSINESS) REGULATIONS – Section 72	177
S.R.O. 24/2002 .. in force 28 February 2002 (S.R.O. 44/2003)	
SECURITIES (CONTINUING DISCLOSURE OBLIGATIONS OF ISSUERS) REGULATIONS – Section 175	189
S.R.O. 25/2002 .. in force 28 February 2002	

Continued on the Inside Cover ...

SECURITIES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS – Section 109	203
S.R.O. 26/2002 .. in force 28 February 2002 (S.R.O. 36/2003)	
SECURITIES (DISCIPLINE) REGULATIONS – Section 175	247
S.R.O. 27/2002 .. in force 28 February 2002	
Amended by S.R.O. 85/2005 .. in force 1 November 2005	
SECURITIES (ACCOUNTING AND FINANCIAL STATEMENTS) REGULATIONS – Section 175	253
S.R.O. 28/2002 .. in force 28 February 2002	
SECURITIES (MINIMUM CAPITAL REQUIREMENTS) REGULATIONS – Section 175	261
S.R.O. 47/2003 .. in force 28 February 2002	
SECURITIES (UNCERTIFICATED SECURITIES) REGULATIONS – Section 155	263
S.R.O. 84/2005 .. in force 1 November 2005	
SECURITIES (FOREIGN SECURITIES AND INTERMEDIARIES) REGULATIONS – Section 175	283
S.R.O. 86/2005 .. in force 1 November 2005	
EASTERN CARIBBEAN SECURITIES MARKET CORPORATE GOVERNANCE RULES – Section 176(b)	291
S.R.O. 79/2020 .. in force 11 November 2020	

Note: Securities (Accounting & Financial Reports) Rules (No. 1/2002)

 Securities (Accounting & Financial Reports (Amendment) Rules (No. 1/2002)

 Securities (Registration Statement) (Amendment) Rules (No. 2/2002)

Published in the *Gazettes* G.N. 170 No. 12/2002, *Extraordinary Gazette* 3/2005 and Notice No. 3/2005 respectively



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CHAPTER 11.01

SECURITIES ACT

ARRANGEMENT OF SECTIONS

PART 1

GENERAL PROVISIONS

SECTION

1. Short title
2. Interpretation
3. Agreement to have the force of law
4. Amendment to Agreement
5. Eastern Caribbean Securities Regulatory Commission
6. Funding of Commission

PART 2

SECURITIES EXCHANGES

7. Restriction on establishment of securities exchanges
8. Eastern Caribbean Securities Exchange Limited
9. Application for securities exchange licence
10. Grant of securities exchange licence
11. Suspension and revocation of securities exchange licence
12. Duties of holder of securities exchange licence
13. Rules of securities exchange
14. Amendment to rules of securities exchange
15. Fixing of trading and position limits
16. Power of Commission to issue directions to securities exchange
17. Power of Commission to require amendment to rules
18. Securities exchange to assist Commission
19. Disciplinary powers over members of securities exchange
20. Closure of securities exchange in emergency
21. Restriction on use of titles relating to exchanges, markets, etc.

PART 3

CLEARING AGENCIES AND SECURITIES REGISTRIES

22. Interpretation
23. Licensing of clearing agencies

24. Application for clearing agency licence
25. Grant of clearing agency licence
26. Rules of clearing agency
27. Approval of amendments to rules of clearing agency
28. Alteration of facts disclosed in application
29. General conditions
30. Revocation and suspension of licence
31. Power of Commission to issue directions
32. Duty to assist Commission
33. Proceedings of clearing agency take precedence over laws of insolvency
34. Duty to report on completion of default proceedings
35. Net sum payable on completion of default proceedings
36. Enforcement of judgements over property subject to market charge
37. Participant to be party to certain transactions as principal
38. Securities deposited with clearing agency
39. Preservation of rights
40. Securities registries
41. Application for securities registry licence
42. Grant of securities registry licence
43. Application of sections 28 to 32 to securities registries
44. Eastern Caribbean Central Securities Registry Limited
45. Eastern Caribbean Central Securities Depository Limited

PART 4

LICENSING OF MARKET PARTICIPANTS

46. Licensing requirement
47. Broker dealers
48. Grant of broker dealer licence
49. Application for broker dealer licence
50. Limited service brokers
51. Grant of limited service broker licence
52. Application for limited service broker licence
53. Investment advisers
54. Grant of investment adviser licence
55. Application for investment adviser licence
56. Custodians
57. Grant of custodian licence
58. Application for custodian licence
59. Non-application of sections 56 to 58
60. Grant of principal licence
61. Application for principal licence

62. Grant of representative licence
63. Application for representative licence
64. Accreditation of representatives
65. Power of Commission to impose conditions
66. Revocation and suspension of licences
67. Power of Commission to issue directions to licensees
68. Register of licensees
69. Notification of change in register particulars
70. Offences under this Part

PART 5

CONDUCT OF SECURITIES BUSINESS

71. Standards of conduct
72. Business conduct regulations
73. Issue of contract notes
74. Short selling
75. Accounts to be kept by broker dealers and limited service brokers
76. Financial resources regulations
77. Failure to comply with financial resources regulations
78. Monitoring compliance with financial resources regulations
79. Customers' property
80. Insurance requirement
81. Auditor to be appointed
82. Audited accounts to be filed with Commission
83. Auditor to report to Commission in certain cases
84. Power of Commission to appoint auditor

PART 6

REGISTERS OF INTERESTS IN SECURITIES

85. Application of this Part
86. Register of Securities
87. Notice of particulars to Commission
88. Production of register
89. Particulars of financial journalists
90. Extract of register
91. Interest in securities

PART 7

OFFERS OF CORPORATE SECURITIES

92. Offers of securities
93. Publication of prospectus
94. Contents of prospectus
95. Compensation for false or misleading prospectus
96. Continuing disclosure obligations of issuers

PART 8

REGISTRATION OF CORPORATE ISSUERS

97. Registration statement
98. Annual reports

PART 9

COLLECTIVE INVESTMENT SCHEMES

99. Interpretation
100. Custodian and management company of collective investment scheme
101. Custodian of collective investment scheme
102. Grant of custodian of investment scheme licence
103. Application for custodian of collective investment scheme licence
104. Managing property of a collective investment scheme
105. Grant of management company of a collective investment scheme licence
106. Application for management company of a collective investment scheme licence
107. Restrictions on promotion
108. Authorisation of schemes by Commission
109. Regulation of collective investment schemes
110. Revocation of authorisation
111. Winding up

PART 10

INSIDER DEALING AND OTHER MARKET ABUSES

112. Insiders
113. Inside information
114. Information “made public”
115. Offence of insider dealing
116. False trading
117. Price rigging

118. Market manipulation
119. Use of deceptive statements as inducements
120. Fraudulent transactions
121. False or misleading statement inducing securities transactions
122. Penalties for offences under sections 116 to 121
123. Liability to pay damages

PART 11

DISCLOSURE OF SHAREHOLDINGS OF DIRECTORS AND SUBSTANTIAL SHAREHOLDERS

124. Interpretation
125. Notification of interests of directors and substantial shareholders
126. Change in director's interest in securities
127. Obligation to notify acquisition or change in substantial shareholding
128. Extension to spouses and children
129. Register of interests of directors and substantial shareholders
130. Notification to securities exchange and Commission
131. Offences

PART 12

INFORMATION, INSPECTION AND INVESTIGATION

132. Power of Commission to call for information
133. Right to exchange information
134. Information relating to transactions
135. Power of Commission to inspect
136. Power of Commission to investigate
137. Inserting disciplinary proceedings
138. Power of Commission to require production of records and documents concerning listed companies
139. Remedy in cases of unfair prejudice by listed companies
140. Destruction of documents
141. Establishment of Disciplinary Committee
142. Jurisdiction of Disciplinary Committee
143. Disciplinary offences

PART 13

TAKEOVERS

144. Takeover offers
145. When companies deemed to be related

146. Conduct of takeovers

PART 14

SELF REGULATORY ORGANISATIONS

147. Licensing requirement
148. Grant of self regulatory organisation licence
149. Required rules
150. Application of other sections to this Part
151. Appointment of auditor
152. Keeping and inspection of records
153. Sanctions
154. Disputes between member companies

PART 15

UNCERTIFICATED SECURITIES

155. Transfer of uncertificated securities

PART 16

LISTING AND TRADING FOREIGN SECURITIES, LICENSING AND EXCHANGE MEMBERSHIP OF FOREIGN MARKET PARTICIPANTS

156. Listing and trading foreign securities
157. Application of other Parts
158. Interpretation
159. Approval of the Commission required
160. Public offer
161. Registration with the Commission
162. Insider dealing and other market abuses
163. Disclosure of shareholding of directors and substantial shareholders
164. Application of Part 12
165. Transfer and ownership of foreign securities
166. Custodians and share registries for foreign securities
167. Simplified listing and membership procedures in certain cases

PART 17

MISCELLANEOUS

168. Immunity
169. Offences and penalties

170. Orders of the High Court
 171. Civil action
 172. Right to appeal
 173. Winding up orders
 174. Receiving orders
 175. Regulations
 176. Rules
 177. Forms
 178. Guidance notes
 179. International identification numbers
- SCHEDULE: Eastern Caribbean Securities Regulatory Commission
Agreement, 2000

CHAPTER 11.01

SECURITIES ACT

(Acts 4 of 2001, 11 of 2005 and 9 of 2011)

AN ACT TO PROVIDE FOR THE PROTECTION OF INVESTORS IN SECURITIES THROUGH A REGIONAL EASTERN CARIBBEAN SECURITIES REGULATORY COMMISSION, BY REGULATING THE SECURITIES MARKET, EXCHANGES AND PERSONS ENGAGED IN SECURITIES BUSINESS, AND BY REGULATING THE PUBLIC ISSUE OF SECURITIES AND TO PROVIDE FOR RELATED MATTERS.

Commencement

[1 January 2002]

PART 1

GENERAL PROVISIONS

Short title

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

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“**accountant**” means a person who is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants, the Association of Chartered Certified Accountants, the American Institute of Certified Public Accountants, the Chartered Institute of Management Accountants, the Certified General Accountants Association of Canada, the Certified Management Accountants of Canada or such other institute or body of accountants as may from time to time be approved by the Commission, and is a practising member in good standing of one of those institutes or is otherwise approved by any supervisory body of the accounting profession recognised under the law of Montserrat;

“**accredited**” is construed in accordance with section 64;

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

- “Agreement”** means the Agreement establishing the Eastern Caribbean Securities Regulatory Commission made on 24 day of November 2000, the text of which is set out in the Schedule and to which the government of Montserrat is a party;
- “broker dealer”** means a person who carries on the business of dealing in securities, or who holds himself out as conducting such business, within the meaning of section 47;
- “broker dealer’s representative”** means an individual in the employment of, or acting for or by arrangement with, a broker dealer, who deals in securities on behalf of that broker dealer, whether he is paid a salary, wages, commission or otherwise;
- “charge”** includes any mortgage, hypothec, assignment, pledge, or lien (other than a lien of a company on shares issued by it) on any security for securing money or money’s worth; (*Inserted by Act 11 of 2005*)
- “clearing agency”** means a company whose business is the provision of services for the clearing and settlement of transactions in securities;
- “Commission”** means the Eastern Caribbean Securities Regulatory Commission established by Article 3 of the Agreement;
- “Company”** includes a company, limited partnerships, unit trust or other business entity, which is incorporated, registered or otherwise established under the laws of a member territory; (*Substituted by Act 11 of 2005*)
- “dealing in securities”** is construed in accordance with section 47;
- “Disciplinary Committee”** means the Disciplinary Committee established under section 141;
- “document”** includes—
- (a) information recorded in any form; and
 - (b) in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;
- “Governor”** means the Governor, acting on the advice of the Cabinet; (*Amended by Act 9 of 2011*)
- “investment adviser”** means a person who carries on business giving advice on securities, or who holds himself out as conducting such business, within the meaning of section 53;
- “investment adviser’s representative”** means an individual in the employment of, or acting for or by arrangement with, an investment adviser, who advises on securities on behalf of that investment adviser, whether that individual is paid a salary, wages, commission or otherwise;
- “issuer”**, in relation to any securities, means the person by whom they have been or are to be issued;
- “licensee”** means a person licensed under Part 4;

“**limited service broker**” is construed in accordance with section 50;

“**limited service broker’s representative**” means an individual in the employment of, or acting for or by arrangement with, a limited service broker, who deals in securities on behalf of that broker, whether he is paid a salary, wages, commission or otherwise;

“**member**”, in relation to a securities exchange, means a licensee who is admitted to membership of the exchange;

“**Monetary Council**” means the Monetary Council established under Article 7 of the Agreement establishing the Eastern Caribbean Central Bank done at Port-of-Spain on the 5th day of July 1983 which said Agreement is set out in the Schedule to the Eastern Caribbean Central Bank Agreement Act, 1983;

“**participating Government**” has the same meaning as in the Agreement;

“**person**” includes a company and an individual;

“**prescribed**” means prescribed by regulations made by the Governor on the recommendation of the Commission; (*Amended by Act 9 of 2011*)

“**principal**” is construed in accordance with section 60;

“**representative**” means an accredited broker dealer’s representative, a limited service broker’s representative or an investment adviser’s representative, as the case may be, licensed under section 62;

“**securities**” means—

- (a) shares and stock in the share capital of a company;
- (b) any instrument creating or acknowledging indebtedness which is issued or proposed to be issued by a company including, in particular, debentures, debenture stock, loan stock, bonds and notes;
- (c) bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of any participating Government;
- (d) any right (whether conferred by warrant or otherwise) to subscribe for shares or debt securities;
- (e) any option to acquire or dispose of any other security;
- (f) units in a collective investment scheme, including shares in or securities of an investment company; and
- (g) any other instruments prescribed to be securities for the purposes of this Act,

but does not include—

- (i) bills of exchange;
- (ii) treasury bills with an original maturity of less than ninety days;

- (iii) promissory notes for less than 270 days;
- (iv) certificates of deposit issued by a licensed financial institution; or
- (v) any other instrument prescribed, on the recommendation of the Commission, not to be securities for the purposes of the Act;

“securities exchange” means a market, exchange, place or facility which provides for bringing together on a regular basis purchasers and sellers of securities, and sets rules for the execution of securities transactions or for the negotiation or conclusion of sales and purchases of securities, but does not include—

- (a) the office or facilities of a member of a licensed securities exchange; or
- (b) the office or facilities of a clearing agency or securities depository;

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

- (2) (a) A company is a subsidiary of another company (its holding company) if that other company—
- (i) holds a majority of the voting rights in it;
 - (ii) is a member of it and has the right to appoint or remove a majority of its board of directors; or
 - (iii) is a member of it and controls alone, pursuant to an agreement with other shareholders, a majority of the voting rights in it;
- (b) A company is deemed to be a subsidiary of another if the first mentioned company is a subsidiary of a company which is itself a subsidiary of that other company.

Agreement to have the force of law

3. The Agreement shall have the force of law in Montserrat.

Amendment to Agreement

4. Where an amendment to the Agreement becomes effective in accordance with Article 32 of the Agreement, the Governor shall, by Order, amend the Schedule to this Act for the purpose of including the amendment. (*Amended by Act 9 of 2011*)

Eastern Caribbean Securities Regulatory Commission

5. The Commission is a legal body vested with all the powers and characteristics of a body corporate having perpetual succession and a common seal.

Funding of Commission

6. (1) The Commission shall be funded in accordance with Article 24 of the Agreement.

(2) The Commission is authorised to impose such fees, charges or levies as may be prescribed.

PART 2

SECURITIES EXCHANGES

Restriction on establishment of securities exchanges

7. (1) No person shall establish or operate a securities exchange in Montserrat except under and in accordance with a securities exchange licence granted by the Commission under this Act.

(2) No person shall assist any other person in the operation of a securities exchange unless that other person is the holder of a securities exchange licence granted by the Commission under this Act.

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

(a) in the case of an individual, to a fine of \$100,000 or to imprisonment for two years or to both;

(b) in the case of a company, to a fine of \$200,000; and

if the offence is a continuing offence, the individual or company is liable to a further fine of \$1,000 for every day that the offence continues after conviction.

(4) A person convicted of an offence under this section shall, following an assessment by the Commission, be liable to pay to the Commission, any moneys received or the monetary equivalent of any assets obtained as a result of carrying on securities business without a licence.

Eastern Caribbean Securities Exchange Limited

8. (1) With effect from the commencement of this Act, the Eastern Caribbean Securities Exchange Limited shall, subject to subsection (3), be deemed to be licensed under this Part.

(2) The Eastern Caribbean Securities Exchange Limited shall, not later than twelve months after the commencement of this Act or within such longer period as the Commission will allow—

- (a) take such steps as are necessary to ensure that it satisfies the conditions specified in section 10(2);
- (b) notify the Commission in writing of the steps so taken; and
- (c) apply for a securities exchange licence under section 9.

(3) If the Eastern Caribbean Securities Exchange Limited fails to take action in accordance with subsection (2) within the time limited by or under that subsection, the Eastern Caribbean Securities Exchange Limited shall cease to be deemed to be licensed on the expiration of that period.

Application for securities exchange licence

9. (1) Only a company whose sole activity is the operation of a securities exchange may apply to the Commission for a securities exchange licence.

(2) An application under subsection (1) shall be made in the prescribed form and accompanied by the prescribed fee.

Grant of securities exchange licence

10. (1) Upon receipt of an application duly made under section 9, the Commission may grant a securities exchange licence if it is satisfied that—

- (a) it is appropriate to do so in the public interest, or for the proper regulation of markets in securities; and
 - (b) the applicant satisfies the conditions specified in subsection (2).
- (2) The conditions to be satisfied by the applicant are that—
- (a) the applicant's activities will be limited to the operation of a securities exchange;
 - (b) the applicant can provide and maintain, to the satisfaction of the Commission, adequate and properly equipped facilities or systems for the conduct of the business of a securities exchange;
 - (c) the applicant shall have not less than three members who are engaged in the business of dealing in securities independently of and in competition with each other;
 - (d) the rules and practices proposed to be followed by the applicant must be such as will ensure that business conducted by means of its facilities or systems will be conducted in an orderly manner and so as to accord proper protection to investors;
 - (e) the applicant has made such arrangements as the Commission considers satisfactory for—
 - (i) the clearing and settlement of dealings in securities to ensure the performance of transactions effected on the securities exchange, and for the recording and publication of such transactions;
 - (ii) market surveillance;

- (iii) the effective monitoring and enforcement of compliance with its rules, this Act and regulations made under this Act; and
- (iv) investigating complaints in respect of business transacted by any of its members;
- (f) the applicant must have default rules which, where a member of the securities exchange appears to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts, enable action to be taken to close out his position in respect of all unsettled market contracts to which he is a party.

Suspension and revocation of securities exchange licence

11. (1) The Commission may suspend a securities exchange licence granted under section 10 if the company—

- (a) temporarily ceases to operate the securities exchange;
- (b) goes into receivership;
- (c) contravenes a provision of this Act;
- (d) is operating in a manner detrimental to the public interest;
- (e) fails to provide the Commission with information lawfully required;
- (f) fails to comply with a lawful direction of the Commission; or
- (g) fails to pay its annual licence fee as prescribed on or before the anniversary of the day of the grant of its licence.

(2) The Commission may revoke a securities exchange licence granted under section 10 if the company—

- (a) ceases to operate the securities exchange;
- (b) is being wound up, compounds or compromises with its creditors;
- (c) contravenes a provision of this Act;
- (d) is operating in a manner detrimental to the public interest;
- (e) fails to continue to comply with the conditions specified in section 10(2);
- (f) fails to pay its annual licence fee as prescribed on or before the anniversary of the day of the grant of its licence; or
- (g) requests the Commission to do so.

(3) The Commission shall not revoke or suspend a securities exchange licence without first giving the holder of the licence an opportunity of being heard.

Duties of holder of securities exchange licence

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

(2) In performing its duties under subsection (1), the holder of a securities exchange licence shall—

- (a)* act in the interests of the investing public; and
- (b)* ensure that such interests prevail where they conflict with any other interests the company is required to serve under any other law.

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

(4) The holder of a securities exchange licence shall provide and maintain at all times to the satisfaction of the Commission—

- (a)* adequate and properly equipped premises for the conduct of its business;
- (b)* competent personnel for the conduct of its business;
- (c)* automated or other systems with adequate capacity, facilities to meet emergencies and security arrangements.

(5) The holder of a securities exchange licence shall notify the Commission immediately if it becomes aware—

- (a)* that a member is unable to comply with any financial resources regulation made under section 76; or
- (b)* of a financial irregularity or other matter which in the opinion of the holder of the securities exchange licence may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet that member's legal obligations.

Rules of securities exchange

13. (1) Subject to the approval of the Commission, the holder of a securities exchange licence shall make rules for the proper and efficient regulation, operation, management and control of the securities exchange.

(2) Without limiting the general effect of subsection (1), the holder of a securities exchange licence shall make rules—

- (a)* in respect of applications for listing and the requirements for listing;
- (b)* regarding agreements to be entered into between the securities exchange and other persons for listing securities and enforcing those agreements;

- (c) regarding the cancellation and withdrawal of the listing of securities and the suspension of dealings in them;
- (d) obliging a person to observe specified standards of conduct or to perform, or refrain from performing, specified acts reasonably imposed for the listing or continued listing of securities; and
- (e) regarding the penalties and sanctions which the holder of the securities exchange licence may impose for a breach of the rules of the securities exchange.

Amendment to rules of securities exchange

14. (1) A securities exchange that wishes to make any amendment to its rules shall submit a draft of the proposed amendment to the Commission for approval.

(2) The Commission shall, within thirty days, of receipt of the proposed amendment by notice in writing to the holder of the securities exchange licence approve the amendment or disapprove the whole or any specified part of the amendment in question and until such notice is given the amendment shall not have force and effect.

Fixing of trading and position limits

15. (1) The Governor may, on the recommendation of the Commission, make regulations prescribing limits on the amount of trading which may be done, or positions which may be held, by a member of a securities exchange.

(2) Subsection (1) does not prohibit the Governor, on the recommendation of the Commission, from fixing different trading or position limits for different types of transactions, or from exempting specified transactions.

(3) Without limiting the general effect of subsection (1), the Governor may, on the recommendation of the Commission, make regulations to prohibit a person from—

- (a) directly or indirectly entering, during a prescribed period, into transactions of a specified class in excess of the prescribed amount; or
- (b) directly or indirectly holding or controlling positions of a specified class in excess of a prescribed position limit.

(Amended by Act 9 of 2011)

Power of Commission to issue directions to securities exchange

16. Where the Commission is satisfied that it is necessary for the protection of investors or for the proper regulation of a securities exchange, the Commission may issue directions to the holder of a securities exchange licence with respect to—

- (a) trading on or through its facilities generally or with respect to the trading of a particular security;

- (b) the manner in which the securities exchange carries on any aspect of its business, including the manner of reporting off-market trades by members; or
- (c) any other matter that the Commission considers necessary for the effective administration of this Act,

and the holder of the securities exchange licence shall comply with the direction.

Power of Commission to require amendment to rules

17. Where the Commission considers it necessary for the protection of investors, it may by notice in writing require the holder of a securities exchange licence to make or to amend or repeal any rule and, on the Commission specifying the amendments and the dates those amendments shall have force and effect, the securities exchange shall comply with the requirement as soon as practicable after receipt of the notice from the Commission.

Securities exchange to assist Commission

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

Disciplinary action over members of a securities exchange

19. (1) Where a securities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member in accordance with its rules, the securities exchange shall, within seven days of taking such action, give to the Commission in writing particulars of the name of the member, the reason for and nature of the action taken, the amount of any fine, and the period of any suspension.

(2) Any action taken by a securities exchange under subsection (1) shall be without prejudice to the power of the Commission to take such action as it sees fit with regard to the member or the licence held by the member.

Closure of securities exchange in emergency

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

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

- (a) of an impending emergency or natural disaster or where such emergency or disaster has occurred in Montserrat; or

- (b) there exists an economic or financial crisis, whether in Montserrat or elsewhere, or any other circumstance, which is likely to prevent orderly trading on the securities exchange.
- (3) The Commission may, on consultation with Monetary Council, extend the direction for further periods not exceeding ten trading days.

Restriction on use of titles relating to exchanges, markets, etc.

21. (1) No person other than the holder of a securities exchange licence may take or use the title or description “stock exchange”, “stock market”, “securities exchange” or “securities market” or anything which so closely resembles any of them as to be calculated to deceive.

(2) Subsection (1) shall not prevent a person from using any of the restricted terms in connection with an application, including application for the formation of a company, to the Commission for a licence.

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

PART 3

CLEARING AGENCIES AND SECURITIES REGISTRIES

Interpretation

22. (1) In this Part—

“**default proceedings**” means any proceedings or other action taken by a clearing agency under its default rules;

“**default rules**”, for a clearing agency, means the rules of the clearing agency required by section 26;

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

“**market charge**” means a charge, whether fixed or floating, granted in favour of a clearing agency—

(a) over property, specified in subsection (2), held by or deposited with the clearing agency; and

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

“**market collateral**” means property, specified in subsection (2), held by or deposited with a clearing agency to secure liabilities arising directly with the clearing agency facilitating the settlement of a market contract;

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

“participant” means a person who, under the rules of a clearing agency, may participate in one or more of the services provided by the clearing agency in its capacity as a clearing agency;

“relevant office-holder” means—

- (a) the Official Receiver appointed under the Bankruptcy Act;
- (b) a person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;
- (c) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property; or
- (d) a person appointed under an order for the administration in bankruptcy of an insolvent estate of a deceased person;

“settlement”, in relation to a market contract, includes partial settlement.

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

- (a) money, letters of credit, bankers’ drafts, certified cheques, and any similar instruments;
- (b) securities;
- (c) futures contracts, and any similar financial contracts.

(3) Where a charge is granted partly for the purpose specified in the definition of “market charge” and partly for other purposes, the charge shall be a market charge in so far as it has effect for that specified purpose.

(4) Where collateral is granted partly for the purpose specified in the definition of “market collateral” and partly for other purposes, the collateral is market collateral in so far as it has been provided for that specified purpose.

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

- (a) the Bankruptcy Act;
- (b) the Companies Act; and
- (c) any other enactment which is concerned with or in any way related to the insolvency of a person.

(6) References in this Part to settlement in relation to a market contract are references to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

Licensing of clearing agencies

23. (1) No person shall establish or operate a clearing agency except under and in accordance with a clearing agency licence granted by the Commission under this Act.

(2) No person shall assist any other person in the operation of a clearing agency unless that other person is the holder of a clearing agency licence.

(3) Subject to the provisions of this Part, the Commission may license a company to operate a clearing agency, which shall be the company's sole activity, where it is satisfied that it is appropriate—

- (a) in the interests of the investing public; and
- (b) for the proper regulation of services for the clearing and settlement of transactions in securities contracts on a securities exchange.

Application for clearing agency licence

24. (1) Only a company may apply to the Commission for a licence to operate a clearing agency.

(2) An application under subsection (1) shall—

- (a) be made in the form prescribed by the Commission and shall be completed in accordance with any direction specified in the form;
- (b) be accompanied by a copy of the applicant's rules; and
- (c) be accompanied by particulars of the securities exchange, together with a letter of confirmation from the securities exchange, with which the applicant proposes to make clearing arrangements.

(3) At any time after receiving an application and before determining it the Commission may require the applicant to furnish additional information.

(4) Any information to be furnished to the Commission under this section shall, if it so requires, be in such form or verified in such manner as the Commission may specify.

Grant of clearing agency licence

25. On receipt of an application duly made in accordance with section 24 the Commission may grant a licence to operate a clearing agency if it is satisfied that—

- (a) it is appropriate to do so in the public interest;
- (b) the applicant has financial resources sufficient for the proper performance of its functions;
- (c) the applicant has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules;
- (d) the applicant is able to provide clearing services which would enable a securities exchange to ensure the performance of transactions effected on the market, and

the default rules of the applicant satisfy the requirements of section 26.

Rules of clearing agency

26. (1) For the purposes of section 25, the rules of a clearing agency shall include provisions—

- (a) where a participant appears to be unable, or likely to become unable, to meet the obligations in respect of one or more market contracts, to enable action to be taken to close out the participant's position in relation to all unsettled market contracts to which the participant is a party;
- (b) where the clearing agency determines that the activities of a participant presents or is likely to present unreasonable risk to the clearance and settlement systems to cease to act for the participant;
- (c) to enable the settlement of all of the contracts by providing for there to be payable by or to the participant a sum of money in relation to each contract if that is required after taking into account all the rights and liabilities of the participant under or in respect of the contract concerned;
- (d) to enable all sums of money payable by or to the participant as determined in accordance with paragraph (b) to be aggregated or set-off so as to produce a net sum, if any, payable by or to the participant;
- (e) if any net sum referred to in paragraph (c) is payable by the participant, to provide for that net sum to be set-off against all property of the participant which is either subject to a market charge or which has been provided as market collateral (or set-off against the proceeds of the realisation of such property) so as to produce a further net sum, if any, payable by or to the participant;
- (f) if any net sum referred to in paragraph (c) is payable to the participant, to provide that all property of the participant which is either subject to a market charge or which has been provided as market collateral shall cease to be subject to the market charge (but without prejudice to any other form of charge to which it may be subject) or to be market collateral (but without prejudice to its provision as any other form of collateral), as the case may be; and
- (g) to provide for the certification by the clearing agency of any net sum referred to in paragraph (c) payable to the participant, or of any further net sum referred to in paragraph (d) payable by or to the participant, as the case may be, or if there is no such sum, the certification by the clearing agency of that fact.

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

Approval of amendments to rules of clearing agency

27. (1) A clearing agency shall submit to the Commission—

- (a) all proposed rules and amendments to rules of the clearing agency; and
- (b) explanations of the purpose and likely effect, including the effect on the investing public of all proposed rules or amendments to rules,

in sufficient detail to enable the Commission to decide whether to approve such rules or refuse to approve them.

(2) The proposed rules of a clearing agency or an amendment to its rules shall not have effect unless the Commission has approved them in writing.

(3) The Commission shall, within thirty days after receiving the proposed rules or amendments for approval, give notice in writing to the clearing agency that—

- (a) it approves them; or
- (b) it refuses to approve them.

(4) The Commission shall not refuse a proposed rule or an amendment to a rule without first giving the clearing agency an opportunity of being heard.

Alteration of facts disclosed in application

28. An applicant for a licence under this Part shall forthwith give written notice to the Commission of—

- (a) any proposed alteration to; or
- (b) the occurrence of any event which it knows affects or may affect in a material respect,

information supplied to the Commission in relation to the application, being a proposal or event made or occurring while the application is pending a decision by the Commission.

General conditions

29. It shall be a condition of every clearing agency licence granted under this Part that—

- (a) the licence is personal to the applicant and is not transferable;
- (b) the clearing agency shall forthwith give written notice to the Commission of—
 - (i) any proposed alteration to; or

- (ii) the occurrence of any event which it knows affects or may affect in a material respect,
any matter in respect of which it was required to supply information to the Commission;
- (c) the consent of the Commission shall be obtained prior to the making of any change in the constitution or control of the clearing agency; and
- (d) the clearing agency shall not carry on, or hold itself out as carrying on, any business other than that of providing clearing and settlement services.

Revocation and suspension of licence

30. (1) The Commission may at any time revoke or suspend a clearing agency licence granted under this Part if it appears to the Commission that the holder of the clearing agency licence—

- (a) has ceased to operate a clearing agency;
- (b) has failed to comply with any obligation to which it is subject under this Act; or
- (c) is operating in a manner detrimental to the public interest.

(2) Where the Commission suspends a licence, the suspension may be for the period, or until the happening of an event, the Commission considers appropriate.

(3) The Commission shall not revoke or suspend a clearing agency licence without first giving the holder of the licence an opportunity of being heard.

Power of Commission to issue directions

31. Where the Commission is satisfied that it is necessary for the protection of investors or for the proper regulation of a clearing agency, the Commission may issue directions—

- (a) with respect to the manner in which the clearing agency carries on any aspect of its business; or
- (b) with respect to any other matter that the Commission considers necessary for the effective administration of this Act,

and the clearing agency shall comply with the direction.

Duty to assist Commission

32. Notwithstanding any other law, a clearing agency shall provide such assistance to the Commission as the Commission reasonably requires for the performance of its functions, including the furnishing of returns and the provision of information in respect of securities transactions or any other specified information as the Commission may require from time to time.

Proceedings of clearing agency take precedence over laws of insolvency

33. (1) The following shall not be to any extent invalid at law for inconsistency with the law for distributing the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver over any of the assets of a person—

- (a) a market contract;
- (b) the rules of a clearing agency for the settlement of a market contract;
- (c) proceedings or other action taken under the rules of a clearing agency for the settlement of a market contract;
- (d) a market charge;
- (e) the default rules of a clearing agency; or
- (f) default proceedings.

(2) No person acting under the laws of insolvency, may exercise any power to prevent or interfere with—

- (a) the settlement of a market contract under the rules of a clearing agency; or
- (b) default proceedings.

Duty to report on completion of default proceedings

34. (1) A clearing agency shall, upon completion by it of default proceedings, make a report on such proceedings stating in respect of each defaulter—

- (a) the net sum, if any, certified by the clearing agency to be payable by or to the defaulter; or
- (b) that no sum is payable.

(2) A clearing agency which has made a report pursuant to subsection (1) shall supply the report to—

- (a) the Commission;
- (b) any relevant office-holder in relation to—
 - (i) the defaulter to whom the report relates; or
 - (ii) that defaulter's estate;
- (c) if there is no relevant office-holder referred to in subsection (b), the defaulter to whom the report relates.

(3) Where the Commission receives pursuant to subsection (2) a report made pursuant to subsection (1), it may publish notice of that fact in such manner as it thinks appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.

(4) Where a relevant office-holder or defaulter receives pursuant to subsection (2) a report made pursuant to subsection (1), the office-holder or defaulter shall, at the request of a creditor of the defaulter to whom the report relates—

- (a) make the report available for inspection by the creditor;
- (b) on payment of such reasonable fee as the relevant office-holder or defaulter, as the case may be, determines, supply to the creditor all or any part of that report.

(5) In subsections (2), (3) and (4), “**report**” includes a copy of a report.

Net sum payable on completion of default proceedings

35. (1) Where a receiving or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any of the provisions of the Bankruptcy Act or the Companies Act, be provable in the bankruptcy or winding up or, as the case may be, shall be payable to the relevant office-holder under the Bankruptcy Act or in the case of a winding-up order under the Companies Act.

(2) This section applies to any net sum certified under section 34(1)(a) by a clearing agency, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

Enforcement of judgements over property subject to market charge

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

(2) Where by virtue of this section a person would not be entitled to enforce a judgement or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgement or order shall not extend to that property.

Participant to be party to certain transactions as principal

37. Where a participant—

- (a) in his capacity as such enters into any transaction (including a market contract) with a clearing agency; and
- (b) but for this subsection, would be a party to that transaction as agent,

then as between the clearing agency and any other person (including the participant and the person who is his principal in respect of that transaction), the participant is for all purposes (including any action, claim or demand, either civil or criminal)—

- (i) deemed not to be a party to that transaction as agent; and
 - (ii) deemed to be a party to that transaction as principal,
- notwithstanding any other enactment or rule of law.

Securities deposited with clearing agency

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

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

Preservation of rights

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

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

Securities registries

40. (1) A person shall not establish or operate, or assist in the operation of, a share registry business that is not licensed for such purpose by the Commission.

(2) Subject to the provisions of this Part, the Commission may licence a company to operate a share registry business where it is satisfied that it is appropriate—

- (a) in the interests of the investing public; and
 - (b) for the proper regulation of share registry services.
- (3)** A person who contravenes subsection (1), commits an offence.

Application for securities registry licence

41. (1) Only a company registered in Montserrat may apply to the Commission for a licence to operate a share registry.

- (2)** An application under subsection (1) shall—
- (a) be made in the form prescribed by the Commission; and
 - (b) be accompanied by the prescribed fee.

(3) At any time after receiving an application the Commission may require an applicant to furnish additional information.

(4) Any information to be furnished to the Commission under this section shall, if it so requires, be in such form or verified in such manner as the Commission may specify.

Grant of securities registry licence

42. On receipt of an application duly made in accordance with section 41 the Commission may grant a licence to operate a share registry if it is satisfied that the applicant has financial resources sufficient for the proper performance of its functions.

Application of sections 28 to 32 to securities registries

43. Sections 28, 29, 30, 31, and 32 shall apply *mutatis mutandis* to a licensed share registry.

Eastern Caribbean Central Securities Registry Limited

44. With effect from the commencement of this Act, the Eastern Caribbean Central Securities Registry Limited shall be deemed to be licensed as a share registry under this Act.

Eastern Caribbean Central Securities Depository Limited

45. With effect from the day of commencement of this Act, the Eastern Caribbean Central Securities Depository Limited shall be deemed to be licensed as a clearing agency and as a custodian under this Act.

PART 4

LICENSING OF MARKET PARTICIPANTS

Licensing requirement

46. Subject to the provisions of this Part, no person shall carry on business, or hold himself out as carrying on business, as—

- (a) a broker dealer;
- (b) a limited service broker;
- (c) an investment adviser;
- (d) a custodian;
- (e) a principal of a broker dealer, limited service broker or corporate investment adviser; or
- (f) a representative of a broker dealer, limited service broker or investment adviser,

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

Broker dealers

47. (1) Subject to the provisions of this Part, no person shall carry on business in Montserrat dealing in securities, or hold himself out as carrying on that business, unless that person is a licensed broker dealer.

(2) No broker dealer shall operate other than in accordance with its licence.

(3) A person is regarded as carrying on business dealing in securities if that person (whether acting as principal or agent) by way of business—

- (a)* makes or offers to make an agreement with another person to enter into or offer to enter into an agreement, for or with a view to acquiring, disposing of, subscribing for or underwriting securities or in anyway effects or causes to effect a securities transaction; or
- (b)* manages a portfolio of securities for another person on terms under which the first mentioned person may hold property of the other person.

(4) A person is not regarded as carrying on business dealing in securities, or as holding himself out as carrying on that business, if that person—

- (a)* is carrying out functions as a clearing agency;
- (b)* deals in securities as principal only through a broker dealer or its representative or a limited service broker;
- (c)* is an investment adviser and, in a manner consistent with a licence granted to that person, manages a portfolio of securities for another person—
 - (i)* without holding property of the other person; and
 - (ii)* on terms which preclude that person from doing so; or
- (d)* gives advice on securities as an incident to the person's practice as a lawyer or professional accountant.

(5) For the purpose of subsections (3) and (4), and section 53(3), “**hold**” in relation to property includes the control of its disposal but does not include the mere receipt and despatch or delivery of a cheque or other order made payable to another person.

Grant of broker dealer licence

48. (1) The Commission may grant a broker dealer licence to a company which applies in the prescribed manner and pays the prescribed fee.

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

(3) The Commission shall refuse to grant a broker dealer licence unless the applicant—

- (a) is a company;
- (b) employs at least one individual who is licensed as a principal under section 60;
- (c) employs at least one individual who is licensed as a representative under section 62;
- (d) has the prescribed minimum paid-up capital and is able to meet the prescribed minimum net liquid capital requirement in cash or readily marketable securities;
- (e) complies with the insurance requirement under section 80;
- (f) satisfies the Commission that it is a fit and proper person to be licensed as a broker dealer;
- (g) will be able, if licensed, to comply with the financial resources regulations that may apply to it;
- (h) has specified premises under section 49(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 licensed, the Commission—

- (a) shall have regard to, in respect of each of its directors and officers—
 - (i) his financial status;
 - (ii) his educational or other qualifications or experience having regard to the nature of his application;
 - (iii) his ability to perform his proposed function efficiently, honestly and fairly; and
 - (iv) his 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, any other company in the same group of companies or to any director or officer of any such company.

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

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

- (a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or
 - (b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.
- (7) The Commission—
- (a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and
 - (b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for such refusal.

Application for broker dealer licence

49. (1) An application for a broker dealer licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

- (a) give the Commission information it reasonably requires—
 - (i) about the services which the applicant will hold itself out as being able to provide if the application is allowed;
 - (ii) about the business which the applicant proposes to carry on and to which the application relates, and about 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 Commission to consider the matters referred to in section 48(3) and (4);
- (b) nominate as a principal at least one individual who will actively participate in, and who will be responsible for the supervision of, its 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.

(2) The Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Limited service brokers

50. (1) A limited service broker means a person dealing in securities whose licence is restricted to executing securities trades on its own account and on behalf of customers, together with any necessary and incidental activities.

(2) A limited service broker shall not provide services such as investment advice, investment banking and underwriting or hold discretionary accounts for customers.

Grant of limited service broker licence

51. (1) The Commission may grant a limited service broker licence to a company which applies in the prescribed manner and pays the prescribed fee.

(2) A limited service broker licence shall restrict the securities business activity that the licensee is permitted to undertake to execute securities trades on its own account and on behalf of customers.

(3) The Commission shall refuse to grant a limited service broker licence unless the applicant—

- (a) is a company;
- (b) employs at least one individual who is licensed as a principal under section 60;
- (c) employs at least one individual who is licensed as a representative under section 62;
- (d) has the prescribed minimum paid-up capital and is able to meet the prescribed minimum net liquid capital requirement in cash or readily marketable securities;
- (e) complies with the insurance requirement under section 80;
- (f) satisfies the Commission that it is a fit and proper person to be licensed as a limited service broker;
- (g) will be able, if licensed, to comply with the financial resources regulations made under section 76 that may apply to it;
- (h) has specified premises under section 52(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 licensed, the Commission—

- (a) shall have regard to, in respect of each of its directors and officers—
 - (i) his financial status;
 - (ii) his educational or other qualifications or experience having regard to the nature of his application;
 - (iii) his ability to perform his proposed function efficiently, honestly and fairly; and
 - (iv) his reputation, character, financial integrity and reliability;
- (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 representative in relation to such business; and

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

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

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

- (a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or
 - (b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.
- (7) The Commission—
- (a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and
 - (b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for it.

Application for limited service broker licence

52. (1) An application for a limited service broker licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

- (a) give the Commission information it reasonably requires—
 - (i) about the services which the applicant will hold itself out as being able to provide if the application is allowed;
 - (ii) about the business which the applicant proposes to carry on and to which the application relates, and about 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 Commission to consider the matters referred to in section 51(3) and (4);
- (b) nominate as a principal at least one individual who will actively participate in, and who will be responsible for the supervision of its 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.

(2) The Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Investment advisers

53. (1) No person shall carry on business in Montserrat giving advice on securities, or hold himself out as carrying on that business, unless he is a licensed investment adviser.

(2) No investment adviser shall operate other than in accordance with his licence.

(3) A person is regarded as carrying on business giving advice on securities if he, by way of business—

- (a)* advises others concerning investment in securities;
- (b)* issues analyses or reports concerning specific securities; or
- (c)* manages a portfolio of securities for another person—
 - (i)* without holding property of the other person; and
 - (ii)* on terms that preclude him from doing so.

(4) A person is not regarded as carrying on business giving advice on securities if that person—

- (a)* is a broker dealer;
- (b)* is a financial institution licensed under the Banking Act;
- (c)* is a lawyer or a professional accountant who gives advice on securities as an incident to the practice of that person's profession;
- (d)* gives advice on securities only in a newspaper, magazine, journal or other periodical publication—
 - (i)* which is generally available to the public; and
 - (ii)* which does not have as its principal or only object the provision of advice, or the issue of analyses or reports, concerning securities.

Grant of investment adviser licence

54. (1) The Commission may grant an investment adviser licence to an individual or a company who applies in the prescribed manner and pays the prescribed fee.

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

(3) The Commission shall refuse to grant an investment adviser licence unless the applicant—

- (a)* in the case of a company, employs at least one individual who is licensed as a principal under section 60;

- (b) in the case of a company, employs at least one individual who is licensed as a representative under section 62;
 - (c) has the prescribed minimum paid up capital;
 - (d) complies with the insurance requirement under section 80;
 - (e) satisfies the Commission that the applicant is a fit and proper person to be licensed as an investment adviser;
 - (f) will be able, if licensed, to comply with the financial resources regulations made under section 76, that will apply to him;
 - (g) has specified premises under section 55(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 licensed, the Commission—

- (a) shall have regard to, in respect of an applicant who is an individual, and in the case of an applicant company in respect of each of its directors and officers—
 - (i) his financial status;
 - (ii) his educational or other qualifications or experience having regard to the nature of his application;
 - (iii) his ability to perform his proposed function efficiently, honestly and fairly;
 - (iv) his reputation, character, financial integrity and reliability; and
 - (v) his satisfactory completion of any examination requirements as may be prescribed;
- (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) where the applicant is a company, any substantial shareholder, director or officer of the company, any other company in the same group of companies or to any director or officer of any such company.

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

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

- (a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or

- (b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.
- (7) The Commission—
- (a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and
 - (b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for it.

Application for investment adviser licence

55. (1) An application for an investment adviser licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

- (a) give the Commission information it reasonably requires—
 - (i) about the services which the applicant will hold himself out as being able to provide if the application is allowed;
 - (ii) about the business which the applicant's company proposes to carry on and to which the application relates; and
 - (iii) to enable the Commission to consider the matters referred to in section 54(3) and (4); and
- (b) nominate as a principal at least one individual who will actively participate in, and who will be responsible for the supervision of, its 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.

(2) The Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Custodians

56. (1) No person shall carry on the business, in Montserrat, of taking securities into custody for safe keeping, or hold himself out as carrying on that business, unless that person is a licensed custodian.

(2) No custodian shall operate other than in accordance with a licence.

Grant of custodian licence

57. (1) The Commission may grant a custodian licence to a company which applies in the prescribed manner and pays the prescribed fee.

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

(3) The Commission shall refuse to grant a custodian licence unless the applicant—

- (a) is a bank or financial institution licensed under the Banking Act;
 - (b) is a trust company which is a subsidiary of such bank or financial institution; or
 - (c) is a company other than a company referred to in paragraph (b) that, has the prescribed minimum paid up capital and the Commission is satisfied that the applicant has the experience necessary to enable it to conduct its business and to carry out its duties as a securities custodian;
 - (d) complies with the insurance requirement under section 80;
 - (e) satisfies the Commission that it is a fit and proper person to be licensed as a custodian;
 - (f) will be able, if licensed, to comply with the financial resources regulations made under section 76 that may apply to it;
 - (g) has specified premises under section 58(1)(b) that are suitable for keeping records or other documents.
- (4) In considering whether an applicant is a fit and proper person to be licensed, the Commission—
- (a) shall have regard to, in respect of each of its directors and officers—
 - (i) his financial status;
 - (ii) his educational or other qualifications or experience having regard to the nature of his application;
 - (iii) his ability to perform his proposed function efficiently, honestly and fairly; and
 - (iv) his reputation, character, financial integrity and reliability;
 - (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 representative in relation to such business; and
 - (iii) any substantial shareholder, director or officer of the company, any other company in the same group of companies or to any director or officer of any such company.
- (5) For the purposes of this section, the Commission may have regard to any information in its possession whether furnished by the applicant or not.
- (6) In subsection (4)(b)(iii), “**substantial shareholder**”, in relation to a company, means a person who has an interest in shares in the company—
- (a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or

- (b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.
- (7) The Commission—
 - (a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and
 - (b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for it.

Application for custodian licence

58. (1) An application for a custodian licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

- (a) give the Commission information it reasonably requires—
 - (i) about the services which the applicant will hold himself out as being able to provide if the application is approved;
 - (ii) about the business which the applicant proposes to carry on and to which the application relates, and about 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 Commission to consider the matters referred to in section 57(3) and (4); and
- (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 Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Non-application of sections 56 to 58

59. Sections 56, 57 and 58 shall not apply to a licensed clearing agency that undertakes custodial services as an incident to its business.

Grant of principal licence

60. (1) The Commission may grant a principal licence to an individual who applies in the prescribed manner and pays the prescribed fee.

(2) The Commission shall refuse to grant a principal licence unless the applicant—

- (a) is an individual;
- (b) satisfies the Commission that the applicant—
 - (i) has sufficient educational or other qualifications or experience;

- (ii) has sufficient authority within the company; and
 - (iii) is a fit and proper person,
to supervise the business for which the company that has nominated him is licensed or is applying to be licensed;
 - (c) satisfies the Commission that he is a fit and proper person to be licensed as a principal;
 - (d) supplies the Commission with the information that it requires to assess whether he is a fit and proper person to be a principal of the company.
- (3) In considering whether an applicant is a fit and proper person to be licensed the Commission 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 proposed function efficiently, honestly and fairly;
 - (d) reputation, character, financial integrity and reliability; and
 - (e) satisfactory completion of any examination requirements as may be prescribed.
- (4) For the purposes of this section, the Commission may have regard to any information in its possession whether furnished by the applicant or not.
- (5) The Commission—
- (a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and
 - (b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for such refusal.

Application for principal licence

61. (1) An application for a principal's licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall give the Commission information it reasonably requires—

- (i) about the services which the applicant will hold himself out as being able to provide if the application is allowed;
- (ii) about the business which the applicant's company proposes to carry on and to which the application relates; and
- (iii) to enable the Commission to consider the matters referred to in section 60(2) and (3).

(2) The Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Grant of representative licence

62. (1) The Commission may grant a representative licence to an individual who applies in the prescribed manner and pays the prescribed fee.

(2) The Commission shall refuse to grant a representative licence unless the applicant—

- (a) is an individual;
- (b) has sufficient educational or other qualifications or experience;
- (c) satisfies the Commission that the applicant is a fit and proper person to be licensed as a representative;
- (d) supplies the Commission 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 licensed the Commission 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 proposed function efficiently, honestly and fairly;
- (d) reputation, character, financial integrity and reliability; and
- (e) satisfactory completion of any examination requirements prescribed by the Commission.

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

(5) The Commission—

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

Application for representative licence

63. (1) An application for a representative licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall give the Commission information it reasonably requires—

- (i) about the services which the applicant will hold himself out as being able to provide if the application is allowed;
- (ii) about the business which the applicant's company proposes to carry on and to which the application relates; and
- (iii) to enable the Commission to consider the matters referred to in section 62(2) and (3).

(2) The Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Accreditation of representatives

64. (1) A representative is accredited to a broker dealer, limited service broker or investment adviser for the purposes of this Part only if—

- (a) the licence of the representative states that he is accredited to the licensee; and
- (b) the representative is recorded as being accredited in the register maintained under section 68.

(2) The Commission shall not issue a representative licence unless both the representative and the licensee have notified the Commission in writing that he is, or is to be, accredited.

(3) If a licensee or representative notifies the Commission in writing that the accreditation of the representative has been terminated—

- (a) the Commission may amend the register of licensees accordingly; and
- (b) the representative shall return his licence to the Commission within seven days of the Commission requiring him to do so.

Power of Commission to impose conditions

65. (1) Any licence granted by the Commission 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 cases.

(3) In the case of a condition of special application to a particular licence the condition shall be for a specified period of time.

(4) The Commission may, by written notice served on the holder of the licence, amend or cancel any of the conditions or attach new conditions provided that, in the case of proposed new conditions, the Commission shall not impose them without first giving the licensee an opportunity of being heard.

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

Revocation and suspension of licences

66. (1) The Commission may revoke a licence granted to an individual under this Part if that individual—

- (a) is shown by certified medical evidence to be mentally or physically incapable of performing the activities to which the licence relates;

- (b) is adjudged a bankrupt, in Montserrat or elsewhere;
- (c) is convicted, whether in Montserrat or elsewhere, of fraud or any other offence involving dishonesty;
- (d) is convicted of an offence under this Act or regulations made under this Act;
- (e) contravenes or fails to comply with any condition applicable in respect of the licence;
- (f) ceases to carry on the business for which that individual is licensed;
- (g) is the holder of a representative licence and the licence of the licensee to whom that individual is accredited is revoked or suspended;
- (h) fails to pay the annual licence fee as prescribed on or before the anniversary of the day of the grant of the licence; or
- (i) by reason of any other circumstances, is no longer a fit and proper person to hold a licence.

(2) The Commission may revoke a licence granted to a company under this Part if—

- (a) the company goes into liquidation or is ordered to be wound up;
- (b) a receiver or manager of all or a substantial part of the property of the company is appointed;
- (c) the company ceases to carry on the business for which it is licensed;
- (d) it has reason to believe that the company, or any of its directors or employees, has not performed its or his duties honestly and fairly;
- (e) the company contravenes or fails to comply with any condition applicable in respect of the licence;
- (f) the company is in breach of this Act or any regulation made under this Act;
- (g) where applicable, the company does not continue to employ at least one person who holds the appropriate representative licence granted under this Act;
- (h) the company fails to pay its annual licence fee as prescribed on or before the anniversary of the day of the grant of its licence; or
- (i) by reason of any other circumstances, the company is no longer a fit and proper person to hold a licence.

(3) The Commission may, if it thinks it necessary—

- (a) as a matter of urgency for the protection of investors; or

(b) as a result of any investigation under this Act or regulations made under this Act,

suspend a licence granted under this Part for the period, or until the happening of an event, as the Commission considers appropriate.

(4) The Commission may revoke a licence at the request of the licensee.

(5) A person whose licence is revoked or suspended under this Act shall be notified accordingly by the Commission and shall, for the purpose of this Act, be deemed not to be licensed from the date of notification of revocation or suspension, as the case may be.

(6) The suspension or revocation of a license under this Part does not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement relating to a dealing in securities entered into by the person whose licence has been suspended or revoked, whether the agreement, transaction or arrangement was entered into before or after the suspension or revocation of the licence, except that the licensee shall not be allowed to retain any benefits charged or payable thereto; or
- (b) affect any right, obligation, or liability arising under any such agreement, transaction or arrangement.

Power of Commission to issue directions to licensees

67. (1) The Commission may by notice in writing give the licensee a direction under this section where it appears to the Commission that—

- (a) it is desirable for the protection of investors; or
- (b) the licensee is contravening, has contravened or is about to contravene, or has failed to comply with any provision of or requirement under this Act or regulations made under this Act, or, in purported compliance with any such provision or requirement has furnished the Commission with information that is false, inaccurate or misleading.

(2) A direction under this section may contain all or any of the following prohibitions or requirements—

- (a) require a licensee to cease and desist from the contravention;
- (b) prohibit a licensee from entering into transactions of a class or description specified in the notice or entering into them otherwise than in circumstances so specified or to an extent so specified;
- (c) prohibit a licensee from soliciting business from a person of a class or description so specified or from persons other than persons of such a class or description; or

- (d) prohibit a licensee from carrying on business in a specified manner or otherwise than in a specified manner;
- (e) as regards any assets whether in Montserrat or elsewhere and whether they are the assets of the licensee or not—
 - (i) prohibit a licensee from disposing of such assets or prohibit the licensee from dealing with them in a manner specified in the notice; or
 - (ii) require a licensee to deal with such assets in, and only in, a manner specified in the notice;
- (f) require a licensee to maintain in Montserrat assets of such value as appears to the Commission to be desirable with a view to ensuring that the licensee will be able to meet its liabilities in respect of its licensed securities business;
- (g) require a licensee to transfer control of assets of a specified class or description to a trustee approved by the Commission.

(3) A licensee shall comply with a direction of the Commission under this section.

(4) A direction under this section shall be for such specified period as the Commission considers necessary (which may be extended as deemed necessary): Except that a direction issued by the Commission containing any prohibition or requirement under subsection (2)(e), (f) or (g) shall be for a period not exceeding sixty days.

(5) A licensee who fails to comply with a direction of the Commission commits an offence.

(6) The Commission may, by written notice either of its own motion or on the application of a licensee on whom a prohibition or requirement has been imposed under this section, rescind or vary the prohibition or requirement if it appears to the Commission that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

Register of licensees

68. (1) The Commission shall maintain a register of persons holding licences granted under this Part in the form it considers most appropriate.

(2) For each licensee other than a licensed principal or representative, the register shall record—

- (a) the name and address of the licensee;
- (b) the date on which the licence was granted;
- (c) the type of securities business permitted by the licence;
- (d) any conditions attached to the licence;
- (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 licensed business are kept;
 - (h) in the case of a company licensee, the name of the principal, the name of each director and of the secretary of the company, and the names and respective shareholdings of each shareholder;
 - (i) any disciplinary action against the licensee;
 - (j) any order of suspension or revocation; and
 - (k) such other particulars as the Commission considers necessary in the interest of the investing or general public.
- (3) For each licensed principal or representative, the register shall record—
- (a) his name and address;
 - (b) the date on which the licence was granted;
 - (c) the name and address of the principal to whom he is accredited;
 - (d) any order of revocation or suspension; and
 - (e) such other particulars as the Commission 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 in register particulars

69. (1) A licensee shall as soon as is practicable and in any event within seven days give notice in writing to the Commission where—
- (a) the licensee is a broker dealer, limited service broker, investment adviser or custodian and ceases to carry on the business to which its licence relates;
 - (b) a representative ceases to be a representative of the licensee to whom the representative is accredited; or
 - (c) a change occurs in any matter particulars of which are required by section 68 to be entered in the register of licensees.
- (2) A licensee who fails to comply with subsection (1), commits an offence.

Offences under this Part

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

- (a) in the case of an individual, to a fine of \$100,000 or to imprisonment for two years or to both;
- (b) in the case of a company, to a fine of \$200,000, and

if the offence is a continuing offence, the individual or company is liable to a further fine of \$1,000 for every day that the offence continues after conviction.

(2) A person convicted of an offence under this section shall, following an assessment by the Commission, be liable to pay to the Commission, any moneys received or the monetary equivalent of any assets obtained as a result of carrying on securities business without a licence.

PART 5

CONDUCT OF SECURITIES BUSINESS

Standards of conduct

71. In the conduct of securities business, a licensee shall at all times act according to the principles of best practice and, in particular, shall—

- (a) observe a high standard of integrity and fair dealing;
- (b) act with due skill, care and diligence;
- (c) observe high standards of market conduct;
- (d) seek from customers information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the licensee to fulfil the licensee's responsibilities to the customer;
- (e) take reasonable steps to give every customer the licensee advises, in a comprehensible way, any information needed to enable the customer to make a balanced and informed investment decision;
- (f) avoid any conflict of interest with customers and, where such a conflict unavoidably arises, ensure fair treatment to the customer by complete disclosure or by declining to act;
- (g) ensure that the interests of the licensee are not unfairly placed above those of the customer;
- (h) protect by way of segregation and identification, those customer assets for which the licensee is responsible;
- (i) maintain adequate financial resources to meet the securities business commitments of the licensee and withstand the risks to which the business is subject;
- (j) organise and control internal affairs in a responsible manner;
- (k) keep proper records;

- (l) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, and establish and maintain well-defined compliance procedures; and
- (m) deal with the Commission in an open and co-operative manner.

Business conduct regulations

72. (1) The Governor may, on the recommendation of the Commission, make regulations prescribing the manner in which licensees are required to conduct their business. (*Amended by Act 9 of 2011*)

(2) Where any contract for the sale or purchase of securities is entered into in contravention of a regulation made under this section, the contravention is actionable at the suit of any customer who suffers loss as a result of the contravention.

Issue of contract notes

73. (1) A broker dealer and limited service broker shall, in respect of every contract for the purchase, sale or exchange of securities entered into by it (whether as principal or agent), not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with subsection (2) and—

- (a) where the contract was entered into by the licensee as agent, deliver the original contract note to the person on whose behalf it entered into the contract; or
- (b) where the contract was entered into by the licensee 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 licensee and the address of the principal place at which it carries on business;
- (b) where the licensee is acting as principal, a statement that it is so acting;
- (c) the name and address of the person (if any) to whom the licensee is required to give the contract note and (where different) the name of the person for whom the transaction was undertaken;
- (d) the date of the contract, and the date on which the contract note is made out;
- (e) the quantity and description of the securities that are the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of consideration under the contract or, in the case of an exchange, sufficient particulars of the securities exchanged to identify them;

- (h) the rate or amount of commission payable in respect of the contract;
- (i) the amount of stamp duty (if any), payable in connection with the contract and, where applicable, in respect of the transfer;
- (j) the date of settlement;
- (k) such other information as may be prescribed to ensure that there is a complete audit trail for the execution of customer instructions and the settlement of market transactions.

Short selling

74. (1) Except in accordance with regulations made by the Governor, on the recommendation of the Commission, a person shall not sell any listed securities which that person or that person's principal does not own either for that person's own account or for the account of another person. (*Amended by Act 9 of 2011*)

(2) For the purposes of subsection (1) a person who sells securities includes a person who—

- (a) purports to sell the securities;
- (b) offers to sell the securities;
- (c) holds himself out as entitled to sell the securities; or
- (d) instructs a broker to sell the securities.

(3) For the purposes of subsection (1), a person is treated as owning securities only if that person—

- (a) or his agent is legally entitled to the securities;
- (b) has purchased the securities, or has entered into an unconditional contract to purchase the securities, even if he does not yet have title to them;
- (c) owns other securities convertible into or exchangeable for the securities and has tendered the other securities for conversion or exchange;
- (d) has an option to acquire the securities and has exercised the option; or
- (e) has rights or warrants to subscribe to the securities and has exercised the rights or warrants,

and that person or that person's agent has received or will receive a fixed or currently ascertainable amount of the securities at a fixed or currently ascertainable price.

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

- (a) in the case of an individual, to a fine of \$200,000 or to imprisonment for three years or to both;

(b) in the case of a company, to a fine of \$400,000.

Accounts to be kept by broker dealers and limited service brokers

75. (1) A broker dealer and a limited service broker shall keep such accounting and other records as will explain the transactions and financial position of all business relating to their licence and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time, and shall keep those records in such manner and form as to enable them to be conveniently and properly audited.

(2) Without limiting the generality of subsection (1), a broker dealer and a limited service broker shall maintain such accounts and other records, and file such financial statements and reports, as may be prescribed.

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

(4) A licensee to whom the financial resources regulations made under section 76 apply shall keep its records in sufficient detail to establish readily whether or not the financial resources regulations are being complied with.

Financial resources regulations

76. (1) The Governor may, on the recommendation of the Commission, make regulations requiring licensees to have and maintain, in respect of the securities business for which they are licensed, the financial resources set by the regulations. (*Amended by Act 9 of 2011*)

(2) Financial resources regulations may—

- (a) impose requirements which are absolute or which vary from time to time by reference to factors which either are specified in, or are to be determined in accordance with, the regulations;
- (b) impose requirements which apply differently to different classes of business for which licensees are licensed, and which take account of a business carried on by the licensee with, or in addition to, the business referred to in subsection (1);
- (c) provide for the assets, liabilities and other matters to be taken into account under the regulations to determine a person's financial resources and the extent to which, and the manner in which, they are to be taken into account for that purpose;
- (d) require licensees to submit to the Commission, at intervals set out in the regulations, returns of their financial resources in a form set by the Commission.

Failure to comply with financial resources regulations

77. (1) If a licensee becomes unable to comply with financial resources regulations that are made under section 76 and are applicable to it, the licensee shall—

- (a) notify the Commission of such inability; and
- (b) cease conducting business for which it is licensed, otherwise than for the purpose of giving effect to an agreement or arrangement permitted under its licence and entered into before the time when it became aware of such inability.

(2) The duties of a licensee under subsection (1) shall arise as soon as it becomes aware, or should, with the exercise of reasonable diligence, have become aware, of its inability to comply with the financial resources regulations and in relation to subsection (1)(a), must be exercised within 24 hours after such awareness.

(3) A licensee that is a company is deemed to be aware of an inability to comply with the financial resources regulations if a director or officer of it is so aware or would, with the exercise of reasonable diligence, have been aware of the inability.

(4) Where the Commission becomes aware of an inability by a licensee to comply with financial resources regulations the Commission may, whether or not notice has been given under subsection (1)—

- (a) suspend the licence; or
- (b) permit the licensee to carry on business on the conditions, if any, the Commission imposes.

(5) A licensee who contravenes subsection (1), commits an offence.

Monitoring compliance with financial resources regulations

78. To ascertain whether or not a licensee complies with the financial resources regulations made under section 76, the Commission or a person authorised by the Commission may appoint in writing an auditor to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the licensee, and on money, securities or other property held on account of any other person by the licensee or by a nominee appointed by the licensee.

Customers' property

79. (1) The Governor may, on the recommendation of the Commission, make regulations with respect to the segregation and safekeeping of customers' money or securities held by licensees on behalf of customers. (*Amended by Act 9 of 2011*)

(2) Without limiting the general effect of subsection (1), regulations may—

- (a) make provision with respect to the opening and keeping of customers' bank accounts, including provision as to the circumstances in which money other than customers' money may be paid into such accounts and the circumstances in which and the persons to whom money held in such accounts may be paid out;
 - (b) require customers' money to be paid forthwith into a segregated bank account the title of which contains the word "customer";
 - (c) require the keeping of accounts and records in respect of customers' money or securities; and
 - (d) require the accounts and records to be examined by an accountant and require the accountant to report to the Commission whether in his opinion the provisions of the regulations have been complied with and on such other matters as may be specified in the regulations.
- (3) A licensee who is accountable for securities that are the property of another person and that the licensee or a nominee controlled by it holds, shall—
- (a) hold and account for them in the manner prescribed;
 - (b) not dispose of, assign or lend the securities or deposit them as security for loans or advances except as may be prescribed.
- (4) Money or other property held by a licensee on account of a customer shall not be available for payment of the debts of the licensee or liable to be paid or taken in execution under the order or process of any court against the licensee.
- (5) A payment made in contravention of subsection (4) is void from the outset, and a person to whom the money is paid does not obtain any title to it.

Insurance requirement

80. Every licensee, other than an accredited principal and representative, shall, to the satisfaction of or on terms prescribed by the Commission, effect and maintain appropriate policies of insurance on such terms and conditions as may be determined by the Commission for the purpose of indemnifying such licensee against any liability that may be incurred as a result of any act or omission by the licensee or any of its officers or employees in the conduct of the licensee's securities business or its business as a custodian or management company of a collective investment scheme.

Auditor to be appointed

81. (1) Within one month after becoming licensed under this Act a licensee, other than an accredited principal and representative, shall appoint an auditor who is acceptable to the Commission.

(2) No person shall be qualified for appointment as an auditor under subsection (1) unless he is an accountant.

(3) An auditor shall not be eligible for appointment under subsection (1) if he is—

- (a) a director, officer, employee, shareholder or partner of the licensee; or
- (b) a partner or employee of such person.

(4) A licensee shall, within seven days of the appointment of an auditor, notify the Commission in writing of the name and address of the auditor.

(5) A licensee shall within seven days of the removal or resignation of an auditor, notify the Commission in writing.

Audited accounts to be filed with Commission

82. (1) A licensee shall—

- (a) for the financial year beginning on the day on which it commences to carry on securities business; and
- (b) for each subsequent year,

submit to the Commission, within ninety days after the end of the financial year, audited financial statements prepared in accordance with international accounting standards, and which contain such additional information as may be prescribed.

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

Auditor to report to Commission in certain cases

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

- (a) becomes aware of any matter which in his opinion adversely affects the financial position of the licensee to a material extent; or
- (b) discovers evidence of a contravention of section 75, 76 or 79,

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

Power of Commission to appoint auditor

84. Where the Commission is satisfied that—

- (a) the licensee has failed to file an auditor's report under section 82;
- (b) the Commission has received a report under section 83; or
- (c) discovers evidence of a contravention of section 75, 76 or 79,

it may appoint in writing an auditor to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the licensee, and on money, securities or other property held on account of any other person by the licensee or by a nominee appointed by the licensee.

PART 6

REGISTERS OF INTERESTS IN SECURITIES

Application of this Part

- 85. (1)** This Part applies to—
- (a) a broker dealer;
 - (b) a broker dealer’s principal and representative;
 - (c) a limited service broker;
 - (d) a limited service broker’s principal and representative;
 - (e) an investment adviser;
 - (f) an investment adviser’s principal and representative; and
 - (g) a financial journalist.

(2) In this Part, “**financial journalist**” means a person who regularly contributes advice concerning securities or prepares analyses or reports concerning securities for publication in a newspaper or periodical.

(3) In this Part, a reference to securities is a reference to securities which are listed on a securities exchange licensed by the Commission.

Register of securities

86. (1) A person to whom this Part applies shall maintain a register, in the prescribed form, of the securities in which that person has an interest.

(2) Particulars of the securities in which a person to whom this Part applies has an interest and particulars of the person’s interest in those securities shall be entered in the register within seven days of the acquisition of the interest.

(3) Where there is a change in the interest in securities of a person to whom this Part applies that person shall, within seven days after the day of the change, enter in the register full particulars of the change including the date of the change and the circumstances by reason of which that change has occurred.

(4) For the purposes of subsection (3) where a person acquires or disposes of securities, there shall be deemed to be a change in the interest of that person.

Notice of particulars to Commission

87. (1) A person to whom this Part applies shall give notice to the Commission in the prescribed form containing such particulars as are prescribed by the Commission including the place at which he will keep the register of his interests in securities.

(2) The notice shall be given—

- (a) in the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or
- (b) in the case of any other person, if the person becomes a person to whom this Part applies within seven days after becoming such a person.

(3) A person who ceases to be a person to whom this Part applies shall, within seven days of his so ceasing, give notice of the fact to the Commission.

(4) A person who fails or neglects to give notice as required by this section commits an offence.

Production of register

88. (1) The Commission or any person authorised by it in that behalf may require any person to whom this Part applies to produce for inspection the register required to be kept pursuant to section 86 and the Commission or any person so authorised may make extracts from the register.

(2) Any person who fails to produce a register for inspection or fails to allow any person authorised under subsection (1) to make a copy of or make extracts from the register commits an offence.

Particulars of financial journalists

89. (1) The Commission or any person authorised by it in that behalf may, where the Commission is satisfied that it is necessary for the protection of investors or in the public interest, by notice in writing require the proprietor or publisher of a newspaper or periodical to supply him with the name and address of the financial journalist who has regularly contributed any advice or prepared any analysis or report that has been published in a newspaper or periodical owned or published by that proprietor or publisher or with the names and addresses of all the financial journalists who have regularly contributed any such advice or prepared any such analysis or report within a period specified in the notice.

(2) A proprietor or publisher of a newspaper or periodical who, without reasonable excuse, fails to comply with a notice under subsection (1) commits an offence.

Extract of register

90. The Commission may supply a copy of the extract of a register obtained pursuant to section 88 to any person who in the opinion of the Commission, should, in the public interest, be informed of the dealing in securities disclosed in the register.

Interest in securities

91. (1) A person shall be deemed to have an interest in a security where a body corporate has an interest in a security and—

- (a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that security;
 - (b) that person has a controlling interest in the body corporate; or
 - (c) that person is, or the associates of that person or that person and his associates are, entitled to exercise or control the exercise of not less than 15% of the votes attached to the voting shares in the body corporate.
- (2) For the purposes of subsection (1)(c), a person is an associate of another person if the first-mentioned person is—
- (a) a company which, by virtue of section 145, is deemed to be related to that other person;
 - (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (1);
 - (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security;
 - (d) a body corporate which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that security; or
 - (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.
- (3) A person shall be deemed to have an interest in a security in any one or more of the following circumstances where that person—
- (a) has entered into a contract to purchase a security;
 - (b) has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
 - (c) has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
 - (d) is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control

the exercise of a right attached to a security, not being a security of which he is the registered holder.

(4) A person shall be deemed to have an interest in a security if that security is held jointly with another person.

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

(6) The following shall not constitute an interest in a security for the purpose of this Part—

- (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
- (b) an interest in a security of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and
- (d) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as is prescribed.

PART 7

OFFERS OF CORPORATE SECURITIES

Offers of securities

92. (1) This Part shall not apply to—

- (a) securities which are offered by the Eastern Caribbean Central Bank;
- (b) an offer of securities that are made or guaranteed by a participating Government; and
- (c) an offer of securities determined by the Commission to be a private placement.

(2) For the purposes of this Part, a person offers securities if that person invites another to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities, or that person invites another person to make such an offer.

(3) Subject to the provisions of this Part, no person shall make a public offer of securities unless the issuer or offeror of the securities has submitted for approval to the Commission a prospectus which complies with this Act, and the Commission has approved the prospectus.

(4) The Commission shall not be liable to any action in damages suffered as a result of any prospectus approved by the Commission.

(5) A prospectus approved by the Commission shall be valid only for a period of up to twelve months from the date of such approval.

(6) The Governor may, on the recommendation of the Commission, exempt issuers or offerors from the prospectus requirement in particular cases or class of cases. *(Amended by Act 9 of 2011)*

(7) The Governor may, on the recommendation of the Commission, make regulations allowing a draft prospectus to be published in advance of its approval by the Commission. *(Amended by Act 9 of 2011)*

(8) A person who contravenes subsection (3), commits an offence and is liable on summary conviction—

(a) in the case of an individual, to a fine of \$200,000 or to imprisonment for three years or to both;

(b) in the case of a company, to a fine of \$400,000, and

if the offence is a continuing offence, the individual or company is liable to a further fine of \$1,000 for every day that the offence continues after conviction.

Publication of prospectus

93. (1) Where a public offer of securities is to be made in Montserrat the offeror shall publish a prospectus by making it available to the public, free of charge, at an address in Montserrat, from the time the securities are first offered until the end of the period during which the offer remains open.

(2) The offeror shall, not less than thirty days before the proposed date of publication of the prospectus, submit a copy to the Commission for approval.

(3) No person shall publish a prospectus until it has been approved by the Commission.

(4) No person shall issue an advertisement (other than a prospectus) announcing a public offer of securities for which a prospectus is required under this Part unless a prospectus has been published and the advertisement gives an address in Montserrat from which it can be obtained.

(5) A person who contravenes subsection (3) or (4), commits an offence and is liable on summary conviction—

(a) in the case of an individual, to a fine of \$100,000 or to imprisonment for two years or to both;

(b) in the case of a company, to a fine of \$200,000, and

if the offence is a continuing offence, the individual or company is liable to a further fine of \$1,000 for every day that the offence continues after conviction.

Contents of prospectus

94. The Commission may approve a prospectus only if—

- (a) it contains all 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—
 - (i) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
 - (ii) the rights attaching to those securities;
- (b) it contains in addition such other information and particulars, and complies with such other requirements, as may be prescribed.

Compensation for false or misleading prospectus

95. Every offeror, issuer, director of an offeror or issuer shall be liable to pay compensation to any person who acquires any of the securities, in reliance upon the prospectus, to which the prospectus relates and suffers loss in respect of them as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required to be included by or under section 94.

Continuing disclosure obligations of issuers

96. (1) Every issuer of securities that are the subject of a public offer, or which are publicly traded, shall keep the Commission, members of the issuer, other holders of its securities and the general public informed as soon as reasonably practicable of any information relating to the issuer and its subsidiaries, if any, that—

- (a) is necessary to enable them and the public to appraise the financial position of the issuer and of its subsidiaries;
- (b) is necessary to avoid the establishment of a false market in its securities; or
- (c) might reasonably be expected materially to affect the price of its securities.

(2) For the purposes of this section, securities are publicly traded if, irrespective of when issued—

- (a) they are traded on a licensed securities exchange; or
- (b) the Commission so determines, having regard to the volume or frequency of trading in such securities.

(3) Without limiting the general effect of subsection (1), the issuer shall also comply with such further obligations and requirements as may be prescribed.

PART 8

REGISTRATION OF CORPORATE ISSUERS

Registration statement

97. (1) In this Part, “**public company**” has the same meaning as in the Companies Act.

(2) From the commencement of this Act, all public companies will become reporting issuers and shall, within ninety days from that date, or within such other period as the Commission may specify, file with the Commission a registration statement in the form specified by the Commission.

(3) A company which proposes to issue securities to the public shall register with the Commission as a reporting issuer and file a registration statement in the form and within the period specified by the Commission.

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

(5) Where a reporting issuer ceases to be a public company, it shall forthwith automatically cease to be a reporting issuer.

Annual reports

98. (1) A reporting issuer shall, within 120 days after the end of its financial year—

- (a)* file with the Commission a copy of its annual report containing such information as the Commission may specify; and
- (b)* forward to each holder of its securities such financial statements as the Commission may specify.

(2) A reporting issuer shall file with the Commission such other reports in such form as the Commission may specify.

(3) Unless specifically authorised by the Commission to the contrary, where a material change occurs in the affairs of a reporting issuer it shall, as soon as practicable but in any event no later than seven days after the change occurs, issue a press release (to be filed with the Commission) authorised by a director of the issuer that discloses the nature and substance of the change.

PART 9

COLLECTIVE INVESTMENT SCHEMES

Interpretation

99. (1) In this Part—
“**collective investment scheme**” means—

- (a) a unit trust;
- (b) an investment company;
- (c) investment contracts, investment programmes or any other arrangements 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 arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and
- (d) any scheme that the Commission may deem to be a collective investment scheme for the purpose of this Act;

“custodian” means any person to whom the property of the scheme is entrusted for safekeeping;

“investment company” means a scheme under which—

- (a) the property of the scheme belongs beneficially to, and is managed by or on behalf of, the company having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that company; and
- (b) the rights of the participants are represented by shares in or securities of that company which—
 - (i) the participants are entitled to have redeemed or repurchased by or out of funds provided by that company; or
 - (ii) can be sold by the participants on a recognised securities exchange at a price related to the value of the property to which they relate;

“participants” means the persons who participate in a collective investment scheme, and includes members of an investment company;

“trustee”, in relation to a unit trust, means the person holding the property of the scheme on trust for the participants;

“unit trust” means a scheme under which the property of the scheme is held on trust for the participants and where—

- (a) the property of the scheme belongs beneficially to the participants and is managed on their behalf by a management company; and
- (b) the rights of the participants are represented by units in the scheme which the participants are entitled to have redeemed or repurchased from them by, or out of moneys provided by, the management company;

“units” means the rights or interests (however described) of the participants in a collective investment scheme.

(2) The arrangements referred to in the definition of collective investment scheme in subsection (1)(c) must be such that the participants do not have day to day control of the management of the property of the scheme and the arrangements must satisfy at least one of the following conditions—

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
 - (b) the property in question is managed as a whole by or on behalf of the operator of the scheme.
- (3) The following are not collective investment schemes—
- (a) arrangements operated by a person otherwise than by way of business;
 - (b) arrangements the purpose of which is the provision of clearing services and which are operated by a person licensed for that purpose by the Commission;
 - (c) contracts of insurance;
 - (d) pension schemes; and
 - (e) such other arrangements as may be determined by the Commission.

Custodian and management company of collective investment scheme

100. Subject to the provisions of this Part, no person shall carry on business, or hold himself out as carrying on business, as—

- (a) a custodian; or
- (b) a management company,

of a collective investment scheme unless that person is licensed to do so by the Commission under this Part.

Custodian of collective investment scheme

101. (1) No person shall carry on business in Montserrat of taking property or assets into custody for safe keeping on behalf of participants of a collective investment scheme, or hold himself out as carrying on that business unless that person is a licensed custodian of a collective investment scheme.

(2) No custodian of a collective investment scheme shall operate other than in accordance with a licence granted and regulations made under this Act.

Grant of custodian of collective investment scheme licence

102. (1) The Commission may grant a custodian of a collective investment scheme licence to a company which applies in the prescribed manner and pays the prescribed fee.

(2) A licence granted under this section may be granted subject to such terms and conditions as the Commission considers necessary for the protection of participants.

(3) The Commission shall refuse to grant a custodian of a collective investment scheme licence unless the applicant—

- (a) is a bank or financial institution licensed under the Banking Act;
- (b) is a trust company which is a subsidiary of such bank or financial institution; or
- (c) is a company other than a company referred to in paragraph (b) that, has the prescribed minimum paid up capital and the Commission is satisfied that the applicant has the experience necessary to enable it to conduct its business and to carry out its obligations as a custodian of a collective investment scheme;
- (d) complies with the insurance requirement under section 80;
- (e) satisfies the Commission that it is a fit and proper person to be licensed as a custodian of a collective investment scheme;
- (f) will be able, if licensed to comply with the financial resources regulations made under section 76 that may apply to the applicant;
- (g) has specified premises under section 103(1)(b) that are suitable for keeping records or other documents.

(4) In considering whether an applicant is a fit and proper person to be licensed as a custodian of a collective investment scheme the Commission—

- (a) shall have regard to, in respect of each of its directors and officers—
 - (i) his financial status;
 - (ii) his educational or other qualifications or experience having regard to the nature of his application;
 - (iii) his ability to perform his proposed function efficiently, honestly and fairly; and
 - (iv) his reputation, character, financial integrity and reliability;
- (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 representative in relation to such business; and
 - (iii) any substantial shareholder, director or officer of the company, any other company in the same group of companies or to any director or officer of any such company.

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

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

- (a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or
 - (b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.
- (7) The Commission—
- (a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and
 - (b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for it.

Application for custodian of collective investment scheme licence

103. (1) An application for a custodian of a collective investment scheme licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

- (a) give the Commission information it reasonably requires—
 - (i) about the services which the applicant will hold himself out as being able to provide if the application is approved;
 - (ii) about the business which the applicant proposes to carry on and to which the application relates, and about 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 Commission to consider the matters referred to in section 102(3) and (4); and
- (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 Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Managing property of a collective investment scheme

104. (1) No person shall carry on business in Montserrat of managing the property or assets of a collective investment scheme, or hold itself out as carrying on that business, unless that person is a licensed management company of a collective investment scheme.

(2) No management company shall operate other than in accordance with a licence granted and regulations made under this Act.

Grant of management company of a collective investment scheme licence

105. (1) The Commission may grant a management company of a collective investment scheme licence to a company which applies in the prescribed manner and pays the prescribed fee.

(2) A licence granted under this section may be granted on such terms and conditions as the Commission considers necessary for the protection of participants.

(3) The Commission shall refuse to grant a management company of a collective investment scheme licence unless the applicant is a company which—

- (a)* has the prescribed minimum paid up capital and the Commission is satisfied that the applicant has the experience necessary to enable it to conduct its business and to carry out its duties as a management company of a collective investment scheme;
- (b)* complies with the insurance requirement under section 80;
- (c)* satisfies the Commission that it is a fit and proper person to be licensed as a management company of a collective investment scheme;
- (d)* will be able, if licensed to comply with the financial resources regulations made under section 76 that may apply to it;
- (e)* has specified premises under section 106(1)(b) that are suitable for keeping records or other documents.

(4) In considering whether an applicant is a fit and proper person to be licensed as a management company of a collective investment scheme, the Commission—

- (a)* shall have regard to, in respect of each of its directors and officers—
 - (i)* his financial status;
 - (ii)* his educational or other qualifications or experience having regard to the nature of his application;
 - (iii)* his ability to perform his proposed function efficiently, honestly and fairly; and
 - (iv)* his reputation, character, financial integrity and reliability;
- (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 representative in relation to such business; and

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

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

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

(a) the stated value of which is equal to or more than 5% of the issued share capital of the company; or

(b) which entitles the person to exercise or control the exercise of 5% or more of the voting power at a general meeting of the company.

(7) The Commission—

(a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and

(b) if it refuses an application for a licence, shall notify the applicant in writing of the refusal and the reasons for it.

Application for management company of a collective investment scheme licence

106. (1) An application for a management company of a collective investment scheme licence shall be made in the prescribed form and accompanied by the prescribed fee, and shall—

(a) give the Commission information it reasonably requires—

(i) about the services which the applicant will hold itself out as being able to provide if the application is approved;

(ii) about the business which the applicant proposes to carry on and to which the application relates, and about 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 Commission to consider the matters referred to in section 105(3) and (4); and

(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 Commission may require an applicant to provide it with such further information as the Commission thinks necessary.

Restrictions on promotion

107. (1) No person shall—

- (a) issue or cause to be issued any advertisement inviting persons to become or to offer to become participants in a collective investment scheme, or containing information calculated to lead directly or indirectly to persons becoming or offering to become, participants in a scheme; or
- (b) advise or procure any person to become or to offer to become a participant in a scheme,

unless the collective investment scheme is authorised by the Commission under this Act and in accordance with regulations made under this Act.

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

- (a) in the case an individual, to a fine of \$100,000 or to imprisonment of two years or to both;
- (b) in the case of company, to a fine of \$200,000, and

if the offence is a continuing offence, the individual or company is liable to a further fine of \$1,000 for every day that the offence continues after the conviction.

Authorisation of schemes by Commission

108. (1) If the scheme complies with regulations made under section 109, the Commission may, on an application being made in the prescribed form and manner and after being furnished with all such information as it may require and the prescribed fee, authorise a collective investment scheme for the purposes of this Act.

(2) An authorisation under subsection (1) may be granted subject to such terms and conditions as the Commission considers to be necessary for the protection of investors.

(3) The Commission shall inform the applicant of its decision on the application not later than ninety days after the date on which the application was received or, if within that period the Commission has required the applicant to furnish further information in connection with the application, from the date on which that information is furnished.

Regulation of collective investment schemes

109. (1) The Governor may, on the recommendation of the Commission, make regulations with regard to—

- (a) the criteria for and conditions of the authorisation of collective investment schemes;
- (b) the constitution and management of collective investment schemes, the powers and duties of the manager and custodian of a scheme and the rights and obligations of the participants in a scheme;

- (c) the promotion, marketing and distribution of units;
- (d) the issue and redemption of units;
- (e) the provision of management or custodial services, or any other services for or in connection with a scheme;
- (f) restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
- (g) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;
- (h) requiring the preparation of periodical reports with respect to the scheme and the submission of those reports to the participants and to the Commission;
- (i) any fee, remuneration or reward payable or receivable for any services referred to in paragraph (e).

(Amended by Act 9 of 2011)

(2) Regulations made under this section may make provisions as to different classes of collective investment schemes and may make different provisions in relation to schemes falling within each class so specified.

Revocation of authorisation

110. (1) The Commission may revoke its authorisation of a collective investment scheme if it determines—

- (a) that any of the requirements for the granting of authorisation is no longer satisfied;
- (b) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be authorised; or
- (c) without prejudice to paragraph (b), that the manager or custodian of the scheme has contravened any provision of this Act or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.

(2) For the purposes of subsection (1)(b), the Commission may take into account any matter relating to the scheme, the manager or custodian, a director or controller of the manager or custodian or any person employed by or associated with the manager or custodian in connection with the scheme.

Winding up

111. (1) Where the Commission revokes its authorisation of a collective scheme under section 110, the Commission may apply to the High Court to appoint a person to wind up the scheme.

(2) On the application under this section the High Court may make such order as it sees fit.

(3) The Commission shall give written notice of the making of an application under this section to the manager and custodian and shall take such steps as it considers appropriate for bringing the making of the application to the attention of the participants.

PART 10

INSIDER DEALING AND OTHER MARKET ABUSES

Insiders

112. (1) For the purposes of this Part, an individual has information as an insider if—

- (a) it is inside information, and that individual knows that it is inside information; and
- (b) that individual has the information, and knows that he or she has the information, from an inside source.

(2) For the purposes of subsection (1), an individual has information from an inside source if—

- (a) the individual has it through—
 - (i) being a director, employee or shareholder of an issuer of securities; or
 - (ii) having access to the information by virtue of that individual's employment, office or profession; or
- (b) the direct or indirect source of the individual's information is a person referred to in paragraph (a).

Inside information

113. For the purposes of this Part—

- (a) “**inside information**” means information which—
 - (i) relates to particular securities or to a particular issuer of securities and not to securities generally or to issuers of securities generally;
 - (ii) is specific or precise;
 - (iii) has not been made public; and
 - (iv) if it were made public would be likely to have a significant effect on the price of any securities;

- (b) securities are “**price-affected securities**” in relation to inside information, if the information would, if made public, be likely to have a significant effect on the price of the securities.

Information “made public”

114. (1) For the purposes of section 113, “**made public**”, in relation to information, shall be construed in accordance with the following provisions of this section, but these provisions shall not be exhaustive as to the meaning of that expression.

(2) Information is made public if—

- (a) it is published in accordance with the rules of a securities exchange for the purpose of informing investors and their professional advisers;
- (b) it is contained in records which by virtue of any enactment are open to inspection by the public;
- (c) it can be readily acquired by those likely to deal in any securities—
 - (i) to which the information relates; or
 - (ii) of an issuer to which the information relates; or
- (d) it is derived from information which has been made public.

Offence of insider dealing

115. A person who has information as an insider commits the offence of insider dealing if that person—

- (a) deals in securities that are price-affected in relation to that information;
- (b) encourages another person to deal in securities that are (whether or not that other person knows it) price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place; or
- (c) discloses the information, otherwise than in the proper performance of the functions of that individual’s employment, office or profession, to another person.

(2) A person who commits an offence under subsection (1), is liable on summary conviction—

- (a) to a fine of \$500,000 or to imprisonment for five years or to both; and
- (b) the court may make an order imposing on the convicted person a penalty, payable to the Commission, of an amount not exceeding three times the amount of any profit gained or loss avoided by any person as a result of the insider dealing.

(3) In addition to the penalty stated in subsection (2) a person who is convicted of an offence under this section shall be—

- (a) liable to compensate any person for any direct loss incurred by that person as a result of the insider dealing unless that other person was a party to the insider dealing;
- (b) accountable to the company for any direct benefit or advantage received or receivable as a result of the insider dealing.

(4) No contract shall be void or unenforceable by reason only of an offence under this section.

False trading

116. (1) A person commits an offence if that person, in Montserrat or elsewhere, creates, or does anything that is intended or knows that it is likely to create, a false or misleading appearance—

- (a) of active trading in securities on a licensed securities exchange;
or
- (b) in the price of securities traded on a licensed securities exchange.

(2) Without limiting the general nature of what constitutes a false or misleading appearance of active trading under subsection (1), a false or misleading appearance of active trading in securities is created for the purpose of this section if a person—

- (a) carries out, either directly or indirectly, a sale or purchase of securities that does not involve a change in the beneficial ownership of them, or offers to do so;
- (b) offers to sell securities at a price that is substantially the same as the price at which that person has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to buy the same or substantially the same, number of them;
or
- (c) offers to buy the securities at a price that is substantially the same as the price at which that person has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same, number of them.

Price rigging

117. A person commits an offence if that person maintains, increases, reduces, or causes fluctuations in, the market price of securities by means of purchases or sales that do not involve a change in the beneficial ownership of those securities or by fictitious transactions or devices.

Market manipulation

118. A person commits an offence if that person enters into or carries out, whether in Montserrat or elsewhere, either directly or indirectly, a transaction in securities that by itself or in conjunction with another transaction—

- (a) increases, or is likely to increase, their market price with the intention of inducing other persons to sell or to purchase, or to refrain from selling or purchasing, securities issued by the same company or a related company;
- (b) reduces, or is likely to reduce, their market price with the intention of inducing other persons to sell or purchase, or to refrain from selling or purchasing, securities issued by the same company or a related company;
- (c) stabilises, or is likely to stabilise, their market price with the intention of inducing other persons to sell or purchase, or refrain from selling or purchasing, securities issued by the same company or by a related company.

Use of deceptive statements as inducements

119. A person commits an offence if that person induces or attempts to induce another person to deal in securities—

- (a) by making or publishing any statement, promise or forecast that that person knows to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts; or
- (c) by recklessly making or publishing any statement, promise or forecast that is false or misleading.

Fraudulent transactions

120. A person commits an offence if that person, directly or indirectly, in connection with any transaction with any other person involving the purchase, sale or exchange of securities—

- (a) employs any device, scheme or artifice to defraud that other person; or
- (b) engages in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, on that other person.

False or misleading statement inducing securities transactions

121. A person commits an offence if that person, directly or indirectly, for the purpose of inducing the sale or purchase of the securities by any other person of any company, or to raise, lower or stabilise the market price of that company's securities, makes with respect to those securities, or with respect to the operations or the past or future performance of the company—

- (a) any statement which is, at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which that person knows or has reasonable grounds to believe to be false or misleading; or
- (b) any statement which is, by reason of the omission of a material fact, rendered false or misleading and which that person knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of that fact.

Penalties for offences under sections 116 to 121

122. A person who commits an offence under section 116, 117, 118, 119, 120 or 121 is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$200,000 or to imprisonment for three years or to both;
- (b) in the case of a company, to a fine of \$400,000.

Liability to pay damages

123. (1) A person who is convicted of an offence under section 116, 117, 118, 119, 120 or 121 shall, in addition to criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss concerned.

(2) Nothing in subsection (1) limits or diminishes any civil liability which any person may incur under any other law.

PART 11

DISCLOSURE OF SHAREHOLDINGS OF DIRECTORS AND SUBSTANTIAL SHAREHOLDERS

Interpretation

124. In this Part—

“**associated person**” shall be construed in accordance with section 91(2);

“**director**” includes—

- (a) a person occupying the position of a director (by whatever name called); and
- (b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors are accustomed to act;

“**interest in securities**” shall be construed in accordance with section 91;

“securities” means securities which are listed on a securities exchange licensed by the Commission;

“substantial shareholder”, in relation to an issuer, means a person who has an interest in shares of the issuer—

- (a) the stated value of which is more than 5% of the issued share capital of the issuer; or
- (b) which entitles the person to exercise or control the exercise of more than 5% of the voting power at a general meeting of the issuer.

Notification of interests of directors and substantial shareholders

125. Where, on the commencement of this Act, a director or substantial shareholder of an issuer is interested in securities of that issuer or another issuer that is an associated person, he shall notify the issuer within fourteen days in writing of his interest in such securities giving particulars of the number of securities of every class.

Change in director’s interest in securities

126. (1) A director shall notify the issuer of which he is a director within fourteen days of the occurrence of—

- (a) any event in consequence of which he becomes or ceases to be interested in securities of the issuer or of an associated person;
- (b) the entering into by him of a contract to buy or sell any such securities;
- (c) the assignment by him of a right granted to him or to any member of his family by the issuer to subscribe for securities of the issuer;
- (d) the grant to him by an associated company of the issuer to subscribe for securities of that associated person, the exercise or the assignment of such a right,

stating the number or amount and class of securities involved.

(2) Where a director is granted the right to subscribe for the securities of a company under subsection (1)(d), the director shall notify the issuer of—

- (a) the date on which the right is granted;
- (b) the period during which or the time at which the right is exercisable;
- (c) the consideration for the grant; and
- (d) in the case of the exercise of the right, the number of securities in respect of which it is exercised, and the name in which such securities are registered.

Obligation to notify acquisition or change in substantial shareholding

127. Any person who—

- (a) not previously being a shareholder of an issuer, acquires an interest in shares so as to become a substantial shareholder of that issuer;
- (b) being a shareholder of an issuer, acquires an interest in further shares so as to become a substantial shareholder;
- (c) being a substantial shareholder of an issuer—
 - (i) acquires an interest in additional shares of the issuer;
 - (ii) reduces his number of shares of the issuer but remains a substantial shareholder; or
 - (iii) ceases to be a substantial shareholder of the issuer,

shall notify the issuer in writing of the occurrence of the event resulting in his change of interest within fourteen days of the date on which it occurred, and the number of shares in which he has become interested or ceased to be interested.

Extension to spouses and children

128. (1) For the purposes of sections 125, 126 and 127, an interest in securities of the spouse and minor child (such child not being a director) of a director or substantial shareholder of an issuer shall be treated as being the substantial shareholder's interest, as the case may be.

(2) In this section “**child**” includes a step-child, an adopted child and a child born out of wedlock.

Register of interests of directors and substantial shareholders

129. (1) An issuer shall keep, in the form and manner specified by the Commission, a register of directors' and substantial shareholders' interests.

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

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

Notification to securities exchange and Commission

130. (1) Where an issuer is notified by a director or substantial shareholder of any matter relating to securities of which the issuer is required to give notice under this Part, or enters in its register any matter relating to securities required to be entered under this Part, the issuer shall inform the securities exchange on which the securities of the issuer are listed, and the Commission, before the end of the day following the day of the notification or entry, as the case may be.

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

Offences

131. A person who contravenes any provision of this Part, or who—

- (a) makes a statement which that person knows to be false;
- (b) recklessly makes a statement which is false; or
- (c) fails to supply any particulars which that person is required to supply,

commits an offence.

PART 12

INFORMATION, INSPECTION AND INVESTIGATION

Power of Commission to call for information

132. (1) The Commission may, by notice in writing, require a licensee to furnish it with such information as it may reasonably require for the exercise of its functions within such reasonable time and verified in such manner as it may specify.

(2) The duty to supply information under this section applies notwithstanding any other enactment or rule of law in Montserrat.

Right to exchange information

133. (1) The Commission, a securities exchange, a clearing agency and other regulatory bodies shall have the right to supply each other with information about their securities business and—

- (a) in the case of a securities exchange, information on the securities business of any of its members; and
- (b) in the case of a clearing agency, information on the securities business of any of its participants.

(2) The Commission may by written notice require a securities exchange or clearing agency to supply it with the information the Commission reasonably requires for the performance of its functions under this Act, including information in the possession, or under the control, of a securities exchange or clearing agency relating to—

- (a) in the case of a securities exchange, the securities business of any of its members; and
- (b) in the case of a clearing agency, the securities business of any of its participants.

(3) The right to exchange, and the duty to supply, information under this section apply notwithstanding any other enactment or rule of law in Montserrat.

Information relating to transactions

134. (1) The Commission or a person authorised in writing by the Commission for the purpose of this section may require—

- (a) a person registered as the holder of securities;
- (b) a person whom the Commission or the person authorised has reasonable grounds to believe holds securities;
- (c) a person whom the Commission or the person authorised has reasonable grounds to believe has a beneficial interest in securities;
- (d) a person whom the Commission has reasonable grounds to believe has acquired or disposed of securities directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise;
- (e) a licensee,

to disclose to the Commission or the person authorised by the Commission the information referred to in subsection (2) in relation to an acquisition, disposal or holding of securities.

(2) The information that may be required under subsection (1) is—

- (a) the name, address, telephone number and occupation of the person, or other particulars that are capable of establishing the identity of the person, from, to or through whom, or on whose behalf, the securities were acquired, disposed of or were or are held;
- (b) the quantity of securities so acquired, disposed of or held; and
- (c) the instructions given to or by the person referred to in (a) in relation to the securities.

(3) A person commits an offence if that person—

- (a) without reasonable excuse fails to disclose to the Commission or the authorised person information required to be disclosed under this section and which is in his possession or under his control; or
- (b) furnishes to the Commission or the authorised person in purported compliance with the requirement of disclosure under this section information which the person knows to be false or misleading in a material particular, where the Commission or an authorised person requires information under subsection (1).

Power of Commission to inspect

135. (1) For the purpose of ascertaining whether a person who is, or at any time has been, a licensee is complying or has complied with any provision of or requirement under this Act, regulations made under this Act or the terms and conditions of his licence, the Commission may from time to time inspect any document relating to the business to which the licence applies.

(2) The Commission may appoint any person (the “authorised person”) to exercise the powers of the Commission under this section.

(3) In the exercise of his powers under this section, an authorised person may—

- (a)* enter the licensee’s premises notified to the Commission under sections 49(1)(c), 52(1)(c), 55(1)(c), 58(1)(b), 103(1)(b) or 106(1)(b) as the case may be;
- (b)* require the licensee, or any other person whom he reasonably believes is in possession of or has under his control any record or other document referred to in subsection (1), to produce it to him;
- (c)* inspect and make copies, or take extracts from, and where necessary in an appropriate case to take possession of, such records or other documents.

(4) For the purpose of an inspection under this section, the licensee or other person mentioned in subsection (3) shall afford an authorised person access to the records or other documents as may be reasonably required for the inspection, and shall produce to the authorised person such records or other documents as he may reasonably require.

(5) Any person who, without reasonable excuse, contravenes subsection (4), commits an offence.

Power of Commission to investigate

136. (1) Where the Commission has reasonable grounds to believe that—

- (a)* an offence under this Act or regulations made under this Act has been committed;
- (b)* a person may have committed a breach of trust, fraud or misconduct—
 - (i)* in dealing in securities;
 - (ii)* in the management of investment in securities; or
 - (iii)* in giving advice as regards the acquisition, disposal, purchase or sale, or otherwise investing in, any security; or
- (c)* the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph *(b)* is not in the interest of the investing public or the public interest,

the Commission may in writing appoint a person (“**the investigator**”) to investigate any matter referred to in paragraphs (a) to (c) and to report the results of the investigation to the Commission.

(2) Any person who is reasonably believed or suspected by the investigator to have in his possession or under his control any record or other document which contains, or which is likely to contain, information relevant to an investigation under this section, or who is so believed or suspected of otherwise having such information in his possession or under his control, shall—

- (a) produce to the investigator, within such time and at such place as he may reasonably require, any document specified by the investigator which is, or may be, relevant to the investigation, and which is in his possession or under his control;
- (b) if so required by the investigator, give to him such explanation or further particulars in respect of a document produced in compliance with a requirement under paragraph (a) as the investigator shall specify; and
- (c) attend before the investigator at such time and place as the investigator may reasonably require in writing, and answer truthfully and to the best of his ability under oath (which oath the investigator is hereby empowered to administer) such questions relating to the matters under investigation as the investigator may put to him.

(3) A person commits an offence if, without reasonable excuse, that person—

- (a) fails to produce a record or other document which that person is required to produce under subsection (2)(a);
- (b) fails to give an explanation or particulars required under subsection (2)(b);
- (c) fails to comply with a requirement under subsection (2)(c) to attend before the investigator; or
- (d) fails to answer a question put to him by the investigator under subsection (2)(c), or in answering the question says anything which that person knows to be false or misleading in a material particular or who in so answering recklessly makes a false statement.

Inserting disciplinary proceedings

137. If it appears to the Commission in the light of an inspection under section 135 or an investigation under section 136 that—

- (a) there are circumstances suggesting that the licensee may not be a fit and proper person to continue to hold a licence;
- (b) there has been a contravention by the licensee of the Act or any regulation made thereunder; or

(c) it is desirable for the protection of investors,
and the Commission decides that the matter should be the subject of disciplinary proceedings, the Commission shall refer the matter to the Disciplinary Committee for a determination. (*Inserted by Act 11 of 2005*)

Power of Commission to require production of records and documents concerning listed companies

138. (1) Where it appears to the Commission that there are circumstances suggesting that—

- (a) the business of a company, which is or was at the relevant time listed, has been or is being conducted—
 - (i) with intent to defraud its creditors, or the creditors of another person;
 - (ii) for a fraudulent or unlawful purpose; or
 - (iii) in a manner oppressive to any of its members;
- (b) a company was formed for a fraudulent or unlawful purpose;
- (c) the persons concerned with the formation of a company or the management of its affairs have in relation to the formation or management been guilty of fraud, misfeasance or other misconduct towards it or its members; or
- (d) the members of a company have not been given all the information with respect to its affairs that they might reasonably expect,

the Commission may give directions to—

- (i) the company;
- (ii) a subsidiary of the company;
- (iii) a company that is substantially under the control of the same person as is the company,

requiring it, at the time and place specified in the directions to produce the records and documents specified in the directions.

(2) The Commission may, when acting under subsection (1), authorise a person, on producing (if required to do so) evidence of his authority, to require a company referred to in subsection (1) to produce to him records and documents specified by him.

(3) Where the Commission or authorised person require production of records and documents from a company under this section, the Commission or authorised person may also require production of those records and documents from a person who appears to the Commission or authorised person to be in possession of them.

(4) A power under this section to require a company or other person to produce records and documents includes the power—

- (a) if the records and documents are produced—
 - (i) to take copies of them or extracts from them; and
 - (ii) to require that person, or any other person who is a present or past officer of the company, or is or was at any time employed by the company, to provide an explanation of any of the records or documents; or
- (b) if the records and documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) If a requirement to produce records or documents or provide an explanation or make a statement which is imposed under this section is not complied with, the company or other person on whom the requirement was so imposed commits an offence.

Remedy in cases of unfair prejudice by listed companies

139. (1) If it appears to the Commission from any information, record or other document obtained under this Part, that the affairs of a listed company are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, the Commission may make an application to the High Court for an order under this section.

(2) If on an application under this section the High Court is of the opinion that the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, whether or not the conduct consists of an isolated act or a series of acts, the High Court may, with a view to bringing to an end the matters complained of—

- (a) make an order restraining the carrying out of the act or conduct;
- (b) order that the company shall bring in its name the proceedings the High Court thinks fit against the persons, on the terms, the High Court orders;
- (c) appoint a receiver or manager of the whole or a part of the company's property or business and may specify the powers and duties of the receiver or manager and fix his remuneration;
- (d) make any other order it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes an alteration in or an addition to the constitution of a company, the company shall not have power

without the leave of the High Court to make any further alteration in or addition to the constitution inconsistent with the order.

Destruction of documents

140. A person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, which he knows or ought to know is relevant to an inspection under section 135 or an investigation under section 136, commits an offence and is liable on summary conviction—

- (a) in the case of any individual, to a fine of \$50,000 or to imprisonment for one year or to both;
- (b) in the case of a company, to a fine of \$100,000.

Establishment of Disciplinary Committee

141. (1) There shall be, for the purposes of this Act, a Disciplinary Committee.

(2) Subject to subsection (4), the Disciplinary Committee shall consist of five members appointed by the Monetary Council as follows—

- (a) one member with at least ten years standing as an attorney-at-law who shall be the Chairman of the Committee, selected from persons nominated by the OECS Bar Association;
- (b) four other members with recognised standing and experience in law, securities, accounting, banking, economics, commerce and industry or finance comprising—
 - (i) one member from persons nominated by Stock Exchanges; and
 - (ii) three members from persons nominated by the Chambers of Industry and Commerce, the Institutes of Chartered Accountants, or from such other relevant business or professional bodies of the territories of the Participating Governments.

(3) The members of the Disciplinary Committee shall hold office for a period of three years but are eligible for re-appointment.

(4) No member or staff of the Commission shall be appointed to be a member of the Disciplinary Committee.

- (5)** The office of a member of the Disciplinary Committee is vacated—
- (a) upon the death of the member;
 - (b) if the member is adjudged bankrupt;
 - (c) if the member is absent from three consecutive meetings of the Disciplinary Committee without its permission or reasonable excuse;

- (d) if the member is certified by a Medical Board or Tribunal or declared by a Court to be mentally or physically incapable of performing the duties of a member;
- (e) if the member is convicted of fraud or any other offence involving dishonesty;
- (f) at any time by the member resigning from office by letter sent to the Chairperson of the Monetary Council and copied to the Secretary of the Commission.

(6) The Disciplinary Committee may act notwithstanding a vacancy among its members or any disability affecting any member.

(7) The Monetary Council may, by instrument in writing, revoke the appointment of any member of the Disciplinary Committee if the Monetary Council considers it to be desirable for the effective performance by the Disciplinary Committee of its functions.

(Substituted by Act 11 of 2005)

Jurisdiction of Disciplinary Committee

142. (1) The Disciplinary Committee shall hear and determine disciplinary proceedings against a licensee referred to it by the Commission under section 137.

(2) The Disciplinary Committee may, where it is satisfied after due inquiry that a licensee is in contravention of any provision of this Act or any regulations made thereunder, exercise in relation to that licensee any one or more of the following sanctions as it deems appropriate in the circumstances—

- (a) issue a private warning or reprimand;
- (b) issue a notice of public censure;
- (c) issue an order requiring the licensee to cease and desist from the activity or non-activity causing the licensee to be in contravention; or
- (d) issue an order debaring the licensee from carrying on securities business whilst the contravention subsists;
- (e) recommend to the Commission the revocation of the licence issued to the licensee.

(3) The procedure and related matters concerning the exercise of the jurisdiction of the Disciplinary Committee shall be as prescribed.

(Inserted by Act 11 of 2005)

Disciplinary offences

143. A licensee who contravenes any provision of this Act, or any regulation made under this Act, is liable to disciplinary proceedings irrespective of any other action, whether criminal or civil, that may be taken against him by any person in respect of the same conduct.

PART 13

TAKEOVERS

Takeover offers

144. (1) In this Part, a “**takeover offer**” means an offer to acquire by or on behalf of a company or individual (“**the offeror**”)—

- (a) all the shares, or all the shares of any class, in a company (“**the offeree company**”) other than shares which at the date of the offer are already held by the offeror; or
- (b) such shares in the offeree company which will result in the offeror acquiring effective control of the offeree company.

(2) For the purposes of subsection (1), “**acquiring effective control**” means the acquiring of shares in an offeree company which (together with shares, if any, already held by the offeror or by any other person that is deemed by virtue of section 145 to be related to the offeror) carry the right to exercise, or control the exercise of, more than 50% of the rights attached to the voting shares of the offeree company.

When companies deemed to be related

145. Where a company—

- (a) is the holding company of another company;
- (b) is the subsidiary of another company; or
- (c) is a subsidiary of the holding company of another company,

that first-mentioned company and that other company shall for the purposes of this Part be deemed to be related to each other.

Conduct of takeovers

146. (1) The Governor may, on the recommendation of the Commission, make regulations with respect to the making and conduct of takeover offers.

(2) Where the Governor has made regulations under subsection (1), no person shall make or pursue a takeover offer except under and in accordance with such regulations.

(Amended by Act 9 of 2011)

PART 14

SELF REGULATORY ORGANISATIONS

Licensing requirement

147. (1) No person shall carry on business as a securities exchange or clearing agency, or carry on activities as an association of securities companies or

investment advisers, except under and in accordance with a self regulatory organisation licence granted by the Commission under this Part.

(2) An application under subsection (1) shall be made in the form prescribed by the Commission.

(3) The Eastern Caribbean Securities Exchange Limited and the Eastern Caribbean Central Securities Depository Limited are deemed to be licensed under this Part as self regulatory organisations.

Grant of self regulatory organisation licence

148. Upon receipt of an application duly made under section 147, the Commission may grant a licence if it is satisfied that the applicant—

- (a) proposes to engage in the securities business;
- (b) is a company;
- (c) is incorporated in Montserrat or incorporated in any other State and registered in Montserrat;
- (d) has a body of rules for the governance of its members which rules comply with the requirements of this Part of the Act and are in all respects acceptable to the Commission.

Required rules

149. (1) The rules of an applicant for a self regulatory organisation licence shall contain provisions—

- (a) for the protection of investors and the public interest;
- (b) relating to the discipline of a member or employee of a member who contravenes its rules or this Act or regulations made under this Act and, without limiting the general effect of the foregoing, may provide for censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of or exclusion from employment;
- (c) specifying the procedure for disciplinary proceedings; and
- (d) for such other matters as may be prescribed.

(2) The rules of an applicant for licensing as a self regulatory organisation shall contain provisions designed to prevent deceptive and manipulative acts and practices and to promote fair trading practices and to facilitate an efficient market.

(3) The rules of an applicant for licensing a clearing agency as a self regulatory organisation shall contain provisions designed—

- (a) to develop and operate a prompt and accurate clearance and settlement system; and
- (b) to safeguard money and securities in its custody or under its control or for which it is responsible.

- (4) The rules of an applicant—
- (a) shall not permit unfair discrimination among persons who use its facilities;
 - (b) shall not restrain competition to an extent not necessary to achieve the objectives specified in subsections (1), (2) and (3).

Application of other sections to this Part

150. Sections 14 and 17 shall apply *mutatis mutandis* to this Part.

Appointment of auditor

151. (1) A self regulatory organisation shall, with the approval of the Commission, appoint auditors.

(2) A self regulatory organisation 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 organisation;
- (b) report the results of the examination to the auditor of the organisation.

(3) A person shall not be qualified for appointment under subsection (1) or (2) unless he is an accountant.

(4) The auditor of a self regulatory organisation shall provide to the Commission on request a copy of a report received by him under subsection (2).

Keeping and inspection of records

152. (1) A self regulatory organisation shall—

- (a) make and keep such records in such form and for such periods as the Commission may determine;
- (b) file with the Commission prescribed reports in the prescribed form as prescribed is defined to mean prescribed by the Governor, on the recommendation of the Commission.

(Amended by Act 9 of 2011)

(2) The Commission may at any time authorise a person in writing to—

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

(3) A self regulatory organisation shall—

- (a) produce and provide a person authorised by the Commission 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

153. (1) Where a self regulatory organisation—

- (a) contravenes its rules, this Act or regulations made under this Act;
- (b) is unable to comply with its rules, this Act or regulations made under this Act; or
- (c) fails or is unable to enforce its rules, any provision of this Act or of regulations made under this Act that it is required to administer or enforce, or fails to comply with an order or direction of the Commission,

the Commission may make an order—

- (i) censuring the organisation;
- (ii) limiting its activities, functions or operations; or
- (iii) suspending or revoking its licence.

(2) Where a director or officer of a self regulatory organisation contravenes the rules of the organisation or of this Act or a regulation made under this Act, the Commission may direct the organisation to censure him or suspend or remove him from office or employment with the organisation.

Disputes between member companies

154. (1) Where a dispute involving a transaction in securities arises between members of a self regulatory organisation, such dispute shall be referred to the board of the organisation 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 Commission in writing of the existence of the dispute and to deliver or cause to be delivered to the other party to the dispute, within 24 hours of such notice to the Commission, a copy of the notice given to the Commission 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 Commission.

(4) Where the Commission adjudicates in a matter referred to it under subsection (3), the decision of the Commission shall be final.

(5) The Commission 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 Commission require.

PART 15

UNCERTIFICATED SECURITIES

Transfer of uncertificated securities

155. (1) Notwithstanding the provisions of the Companies Act, the ownership of or rights in corporate securities which are listed or proposed to be listed may, subject to the provisions of this Part, be evidenced and transferred without a written instrument.

(2) The Governor may, on the recommendation of the Commission, make regulations—

- (a) providing for procedures for recording and transferring title to securities;
- (b) providing for the regulation of those procedures and the persons responsible for or involved in their operation;
- (c) containing such safeguards as appear to the Governor appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented;
- (d) providing for the transmission of title to securities by operation of law;
- (e) providing for recording liens held by companies pursuant to their articles of association to be recorded and procedures in respect thereof;
- (f) providing for recording of charges in respect of securities (and transfer of such charges) to be recorded and procedures in respect thereof;
- (g) including such supplementary, incidental and transitional provisions as appear to the Governor to be necessary or expedient.

(3) Regulations may make provision with respect to the persons responsible for the operation of the new procedures—

- (a) as to the consequences of their insolvency or incapacity;
- (b) as to the transfer from them to other persons of their functions in relation to the new procedures.

(4) Regulations may make different provisions for different cases.

(Amended by Acts 11 of 2005 and 9 of 2011)

PART 16

LISTING AND TRADING FOREIGN SECURITIES, LICENSING AND EXCHANGE
MEMBERSHIP OF FOREIGN MARKET PARTICIPANTS**Listing and trading foreign securities**

156. The securities of a foreign company or a foreign government may be listed and traded on a securities exchange licensed by the Commission as provided in this Part.

Application of other Parts

157. Except as expressly exempted or modified by the provisions of this Part, the provisions of all other Parts of this Act and all Regulations made under the Act shall apply mutatis mutandis to the listing and trading of foreign securities.

Interpretation

158. In this Part—

“**foreign company**” includes a company, limited partnerships, unit trust or other business entity, which is incorporated or otherwise established under the laws of a jurisdiction other than a member territory;

“**foreign custodian**” means a custodian incorporated in and governed by the laws of a country other than a member territory;

“**foreign government**” means a government or political subdivision of a government other than one of a member territory;

“**foreign individual**” means any individual who is a citizen of, resident of, or belongs to any country other than a member territory;

“**foreign investment adviser**” means an investment adviser incorporated in and governed by the laws of a country other than a member territory;

“**foreign security**” means a security issued by a foreign company or foreign government;

“**foreign securities exchange**” means a licensed securities exchange, incorporated in and governed by the laws of a country other than a member territory;

“**foreign securities registry**” includes a share registry incorporated in and governed by the laws of a country other than a member territory;

“**member territory**” has the same meaning as in the Eastern Caribbean Securities Regulatory Commission Agreement of 24th November, 2000.

Approval of the Commission required

159. (1) A securities exchange may list or trade foreign securities with the approval of the Commission in particular cases or classes of cases.

(2) The Commission may licence a foreign company as a broker dealer, limited service broker, or investment adviser in particular cases or classes of cases.

(3) A foreign broker dealer or limited service broker licensed by a foreign securities regulatory commission seeking to trade securities on a securities exchange licensed by the Commission may, upon registration with the Commission, become a member of a licensed securities exchange provided that it—

- (a) meets the securities exchange's requirements for membership as set out in its rules; and
- (b) trades securities on its own account, or on behalf of foreign persons.

(4) The Commission may grant an exemption from the requirements of Part 4 of the Act to a foreign broker dealer or limited service broker who registers with the Commission pursuant to subsection (3).

(5) A foreign broker dealer or limited service broker wishing to carry on business in Montserrat dealing in securities, or holds himself out as carrying on that business must be licensed by the Commission.

(6) Part 4 of the Securities Act shall apply to a foreign broker dealer or limited service broker carrying on the business of dealing in securities pursuant to subsection (5).

(7) A foreign broker dealer or limited service broker dealing in securities in Montserrat shall have an agent resident in Montserrat.

(8) A foreign investment adviser licensed by a foreign securities regulatory commission must be licensed by the Commission as an investment adviser under sections 54 and 55, but only if he conducts business or holds himself out as conducting business in a member territory.

(9) A principal of, a foreign broker dealer or limited service broker licensed by the Commission, must be licensed by a foreign securities regulatory commission as a principal under sections 60 and 61, but only if he conducts business or holds himself out as conducting business in a member territory.

(10) A representative of, a foreign broker dealer or limited service broker licensed by a foreign securities regulatory commission, must be licensed by the Commission as a representative under sections 62, 63 and 64, but only if he conducts business or holds himself out as conducting business in a member territory.

(11) The term “**conducting business or holds himself out as conducting business**” as used in subsections (8), (9) and (10) shall include but not be limited to—

- (a) use of the telephone, telegraph, mail, Internet, e-mail or any other means to communicate with investors or potential investors located in a member territory, whether on a regular or sporadic basis;

- (b) visiting investors or potential investors in a member territory, whether singly or in groups, to communicate with them about an investment in securities, whether on a regular or sporadic basis; or
- (c) registration as a principal or representative with a securities exchange in connection with a foreign broker dealer or limited service broker's membership in a securities exchange;
- (d) engaging in any other activity or combination of activities described in—
 - (i) section 47 in the case of foreign broker dealers or limited service brokers; or
 - (ii) section 53 in the case of foreign investment advisers, if any part of the activity or activities takes place in a member territory or is designed or intended to communicate with the persons present in a member territory.

(12) A person is subject to the requirements of subsections (8), (9) and (10) if he participates in any of the activities listed in subsection (11) even if he is not physically present in a member territory when he participates in the activity.

Public offer

160. In determining whether or not a public offer of foreign securities has been made in a member territory, or whether the requirements of this Act relating to public offers apply in a particular case, the listing or trading of foreign securities on a securities exchange shall not be taken into account.

Registration with the Commission

161. (1) The listing and trading of foreign securities on a securities exchange pursuant to this Part shall not, either by itself or in conjunction with other activities by a person, require the issuer of the foreign securities to register with the Commission under section 97.

(2) Subsection (1) shall not be interpreted to exempt issuers and offerors who are otherwise required to register with the Commission under section 97 from that requirement.

Insider dealing and other market abuses

162. The provisions of Part 10 shall not apply to the conduct of a foreign company occurring on a foreign securities exchange or otherwise occurring in a foreign jurisdiction, unless the Commission determines on consultation with the securities exchange where the security of the foreign company is listed, that the conduct has a significant impact on the market in Montserrat.

Disclosure of shareholding of directors and substantial shareholders

163. (1) Subject to the provisions of subsection (2), the provisions of Part 11 of the Act shall not apply to foreign securities listed or traded on a securities exchange.

(2) If the Commission determines, after an investigation, that the law of a foreign issuer's jurisdiction of incorporation, or other laws that are applicable to the conduct of the foreign issuer, its directors, and substantial shareholders, are not adequate to protect the interests of the investing public in the member territory, the Commission may require the issuer of foreign securities listed on a securities exchange and its directors and substantial shareholders to comply with Part 11.

Application of Part 12

164. The provisions of Part 12 of the Act shall apply—

- (a)* in the case of foreign securities listed or traded on a licensed securities exchange, only to the acts of the issuer within the member territory or to transactions effected on or information provided to, that securities exchange; and
- (b)* in the case of a foreign broker dealer, limited service broker, investment adviser or the principal or representative of that person, only to acts of the licensee within the member territory or to transactions effected on, or information provided to, a securities exchange.

Transfer and ownership of foreign securities

165. Notwithstanding any other provision of any law to the contrary—

- (a)* the exclusive method of transferring the ownership of foreign securities listed and traded on a securities exchange shall be a transfer made in accordance with the rules and procedures of a clearing agency licensed by the Commission under section 25 where the foreign securities are transferred; and
- (b)* the exclusive method of determining the ownership of foreign securities listed and traded on a securities exchange shall be the records of a securities registry licensed by the Commission under section 42 where the foreign securities are registered.

Custodians and share registries for foreign securities

166. (1) Foreign securities listed and traded on a licensed securities exchange may be held by a foreign custodian and registered with a foreign securities registry pursuant to a written contract between the foreign custodian or registry and a custodian licensed under section 57 or a securities registry licensed under section 42.

(2) A securities exchange may, by rules, determine the form and content of the contracts referred to in subsection (1).

Simplified listing and membership procedures in certain cases

167. (1) A securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified listing procedures for foreign securities that are already listed on a foreign securities exchange if the foreign securities exchange has suitable listing, compliance and regulatory standards and practices.

(2) A securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified membership procedures for foreign broker dealers or foreign limited service brokers that are already subject to regulation in a suitable jurisdiction if that jurisdiction is recognized for the purposes of this Part by the Commission as having suitable standards, compliance practices and regulatory supervision of its broker dealers.

(Inserted by Act 11 of 2005)

PART 17

MISCELLANEOUS

Immunity

168. The Commission, members, officers and employees of the Commission shall not be liable to any action in damages for anything done or omitted to be done *bona fide* in the exercise or performance of any power or duty conferred or imposed by or under this Act. *(Amended by Act 11 of 2005)*

Offences and penalties

169. (1) A person who commits an offence under sections 21(3), 40(3), 67(5), 69(2), 77(5), 82(2), 87(4), 88(2), 89(2), 131, 134(3), 135(5), 136(3) or 138(5) is liable on summary conviction—

(a) in the case of an individual, to a fine of \$50,000 or to imprisonment for one year or to both;

(b) in the case of a company, to a fine of \$100,000, and

if the offence is a continuing offence, the individual or company is liable to a further fine of \$1,000 for every day that the offence continues after conviction.

(2) A person who contravenes or fails to comply with any other provision of this Act, where the provision does not expressly create an offence or provide for a penalty, commits an offence and is liable on summary conviction—

(a) in the case of an individual, to a fine of \$100,000;

(b) in the case of a company, to a fine of \$200,000.

Orders of the High Court

170. (1) Where, on the application of the Commission, it appears to the High Court that a person has contravened this Act or the conditions of any licence, or

is about to do an act with respect to dealing in securities that, if done, would be such a contravention, the High Court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders—

- (a) an order restraining a person from acquiring, disposing of, or otherwise dealing with any securities specified in the order;
- (b) in relation to a broker dealer, limited service broker, investment adviser or custodian, an order appointing a person to administer its property;
- (c) an order declaring the contract, if any, relating to any securities to be void or voidable;
- (d) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; or
- (e) any ancillary order which it considers necessary in consequence of the making of any other order under this section.

(2) The High Court shall, before making an order under this section, satisfy itself, so far as it reasonably can, that the order would not unfairly operate to the detriment of any other person.

(3) The High Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(4) The High Court may reverse, vary, or discharge an order made by it under this section or suspend the operation of such an order.

Civil action

171. Without prejudice to any other provision of this Act, a contravention of this Act or regulation made under this Act shall be actionable at the suit of a person who suffers pecuniary loss as a result of the contravention.

Right of appeal

172. (1) An interested person who is aggrieved by a decision or action of the Commission or of the Disciplinary Committee may appeal to the High Court within thirty days of the decision or action, on the grounds that—

- (a) the decision of the Commission or the Disciplinary Committee was based on an error of law or a misinterpretation of the Act or regulations made under the Act;
- (b) the Commission (where it is required by Act or by general legal principles to observe the rules of natural justice) or the Disciplinary Committee misdirected or mis-conducted itself contrary to the rules of natural justice; or

(c) the decision of the Commission or the Disciplinary Committee was against the weight of the evidence.

(2) Within seven days of the filing of the appeal in the High Court the appellant must serve written notice of the appeal on the Commission or the Disciplinary Committee which must be named as Respondent in the appeal and is entitled to appear and to be heard on the merits of the appeal.

(3) A written notice of appeal (other than in respect of costs only) shall set out each matter or charge relevant to the appeal, the ground or grounds of appeal in relation to each charge and a brief statement of the matters relied on in respect of each ground.

(4) On hearing the parties to the appeal, the High Court may confirm, reverse or vary the decision or action appealed against and may make an order which the Respondent could have made or it may remit the case to the Respondent for further proceedings subject to any conditions which the High Court thinks fit.

(5) A decision or action that is subject to appeal under this section takes effect immediately but the High Court may grant a stay pending the hearing of the appeal.

(6) For the purposes of this section an interested person refers to a person having a right, claim, legal share, duty or liability connected with the subject-matter of a decision or action referred to in subsection (1).

(7) An appeal shall lie to the Court of Appeal from any decision of the High Court made pursuant to this section.

(Inserted by Act 11 of 2005)

Winding up orders

173. If, in the case of a company licensed under this Act, it appears to the Commission that it is necessary for the protection of investors that the company should be wound up under the Companies Act, the Commission may present a petition for it to be wound up under that Act on the ground that it is just and equitable that it should be wound up.

Receiving orders

174. If it appears to the Commission that it is necessary for the protection of investors to do so, the Commission may present a petition for a receiving order in accordance with the Bankruptcy Act against an individual licensed under this Act if the individual has committed an act of insolvency within the meaning of that Act, and that Act shall, with any necessary modifications, apply in relation to any such petition as it applies in relation to a petition presented by a creditor.

Regulations

175. (1) Without limitation to specific provisions in this Act enabling the Governor to make regulations, the Governor may make regulations, on the recommendation of the Commission, for or with respect to—

- (a) applications for licences, the issue of licences and incidental matters;
- (b) the display of licences and the issue of duplicate licences;
- (c) the qualifications, experience and training required of licensees, the examinations that applicants for licences may be required to take, and the circumstances in which they may be excused from such requirements;
- (d) the making of annual or other regular returns to the Commission by licensees;
- (e) the conditions subject to which securities may be listed and the circumstances in which dealings in listed securities shall be suspended;
- (f) insider dealings and market manipulation;
- (g) the particulars to be recorded in relation to accounts to be kept for the purposes of this Act, and the particulars to be recorded in profit and loss accounts and balance sheets;
- (h) the information to be contained in auditors' reports required to be filed under this Act;
- (i) the remuneration of an auditor appointed, and the costs of an audit carried out, under this Act;
- (j) the form and content of advertisements relating to securities business, and may restrict who may issue such advertisements;
- (k) the licensing and supervision of clearing agencies and persons providing securities registration, transfer or custodian services;
- (l) the authorisation and regulation of self regulatory organisations;
- (m) fees, charges or levies to be paid in respect of matters arising under or provided for or authorised by this Act;
- (n) the listing and trading of foreign securities ;
- (o) the licensing of foreign broker dealers and limited service brokers;
- (p) the licensing of foreign investment advisers;
- (q) the licensing of principals and representatives of foreign intermediaries;
- (r) any matter which this Act provides is to be, or may be, prescribed;
- (s) the better carrying out of the purposes and provisions of this Act;
- (t) any supplementary, incidental and transitional provisions as appear to the Governor as necessary or expedient.

(Amended by Act 9 of 2011)

(2) The regulations may provide that a contravention of any specified provision shall be an offence and may provide financial penalties of—

- (a) in the case of an individual, \$100,000;
- (b) in the case of a company, \$300,000, and

if the offence is a continuing offence, the individual or company is liable to a further fine of \$500 for every day that the offence continues after conviction.

(3) The regulations may be of general or special application and may make different provision for different cases or classes of case.

(4) Regulations, whether made under this or any other section, may provide for the exercise of discretion in particular cases.

(Amended by Act 11 of 2005)

Rules

176. The Commission may make rules for procedural and implementation matters—

- (a) where the Act or regulations provide that they are to be, or may be, prescribed by the Commission;
- (b) for the better carrying out of the purposes and provisions of this Act and any regulations made under this Act.

Forms

177. The Commission may, by notice in the *Gazette*, specify forms that are required to be used for any purpose under this Act.

Guidance notes

178. The Commission may from time to time issue such guidance notes, bulletins, advice or other regulatory statements as it may consider necessary or desirable for the administration of this Act.

International identification numbers

179. The Eastern Caribbean Central Securities Depository Limited is authorised to issue international identification numbers for any securities listed on any securities exchange licensed under this Act.

SCHEDULE

**EASTERN CARIBBEAN SECURITIES
REGULATORY COMMISSION AGREEMENT**

ARRANGEMENT OF ARTICLES

PART 1

PRELIMINARY

ARTICLE

1. Title
2. Interpretation

PART 2

ESTABLISHMENT, PURPOSES, POWERS AND DUTIES OF THE COMMISSION

3. Establishment of Commission
4. Purposes of the Commission
5. Powers of the Commission
6. Duties of the Commission
7. Place of office and establishment of agencies
8. Address and service of documents
9. Protection of persons dealing with the Commission and its agents
10. Custody and use of Common Seal
11. Official Seal

PART 3

MEMBERS OF THE COMMISSION

12. Composition of Commission
13. Chairperson, Deputy Chairperson and Secretary
14. Appointment of Commissioners to be notified in *Official Gazette*
15. Term of office of Chairperson, Deputy Chairperson and other Commissioners
16. Vacation and removal from office of Commissioners
17. Meetings of Commission
18. Administration
19. Committees
20. Delegation
21. Disclosure of interest
22. Staff
23. Confidentiality

PART 4

FINANCIAL MATTERS

24. Funding
25. Reserve Fund
26. Financial year and estimates
27. Accounts
28. Auditors and audit
29. Annual Report

PART 5

MISCELLANEOUS

30. Consultation and co-operation
31. Rules
32. Amendments
33. Disputes
34. Immunities and privileges
35. Accession
36. Signatories
37. Ratification
38. Entry into force

AGREEMENT
ESTABLISHING
THE
EASTERN CARIBBEAN SECURITIES REGULATORY COMMISSION

PREAMBLE

An Agreement made on the 24th day of November, 2000 between the Governments of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines (hereinafter referred to as “**the Participating Governments**”).

WHEREAS it is desired to promote the development of and to provide for the regulation of a regional securities market in the territories of the Participating Governments and to establish the Eastern Caribbean Securities Regulatory Commission (ECSRC) as an independent and autonomous regional regulatory body.

IT IS HEREBY AGREED as follows:

PART 1

PRELIMINARY

Article 1

TITLE

This Agreement may be cited as the Eastern Caribbean Securities Regulatory Commission Agreement, 2000.

Article 2

INTERPRETATION

In this Agreement—

“**the Act**” means any Act governing securities;

“**Central Bank**” means the Eastern Caribbean Central Bank established under the Eastern Caribbean Central Bank Agreement, 1983;

“**Eastern Caribbean Central Bank Agreement, 1983**” means the Agreement establishing the Eastern Caribbean Central Bank done at Port-of-Spain on the 5th day of July 1983;

“**Commission**” means the Eastern Caribbean Securities Regulatory Commission (ECSRC) established under Article 3;

“**Commissioner**” means a member of the Commission;

“**licensee**” means a person licensed under the Act;

“**Monetary Council**” means the Monetary Council established under Article 7 of the Eastern Caribbean Central Bank Agreement, 1983;

“**Member territory**” means a territory of a Participating Government;

“**Participating Government**” means a Government which is a party to this Agreement.

PART 2

ESTABLISHMENT, PURPOSES, POWERS AND DUTIES OF THE COMMISSION

Article 3

ESTABLISHMENT OF COMMISSION

(1) There is hereby established a body to be known as the Eastern Caribbean Securities Regulatory Commission (ECSRC) which shall be a body corporate having perpetual succession.

(2) The establishment of the Commission shall take effect in accordance with the provisions of Article 38.

Article 4

PURPOSES OF THE COMMISSION

The purposes of the Commission are—

- (a) to licence any person engaged in securities business and to monitor and supervise the conduct of such business by a licensee;
- (b) to promote investor protection through promotion of the highest standards of professional and other activities within the securities market;
- (c) to maintain effective compliance and enforcement programmes supported by adequate statutory powers;
- (d) to promote the growth and development of the capital markets.

Article 5

POWERS OF THE COMMISSION

For the attainment of its purposes the Commission may—

- (a) acquire and dispose of property of any description;
- (b) make contracts or enter into other agreements;
- (c) receive and expend money;
- (d) grant licences in accordance with the Act;

- (e) require the payment of fees;
- (f) do all such other things as are required or incidental to the attainment of its purposes.

Article 6

DUTIES OF THE COMMISSION

The duties of the Commission are to—

- (a) take all reasonable steps to ensure that any Act to govern securities and any rules or regulations made under such an Act are complied with;
- (b) licence, supervise and regulate the activities of securities exchanges, clearing agencies, securities depositories, securities registries and self regulatory organisations;
- (c) licence, supervise and regulate collective investment schemes;
- (d) licence and regulate self regulatory organisations;
- (e) set standards of competence for licensees whether by way of examination or otherwise;
- (f) approve the rules of securities exchanges, clearing agencies, securities depositories, securities registries and self regulatory organisations;
- (g) monitor and enforce rules for the conduct of business of licensees including suspension and revocation of licences in accordance with the Act;
- (h) promote and encourage high standards of investor protection and integrity among licensees, and to encourage the promulgation by licensees of balanced and informed advice to their customers and to the public generally;
- (i) support the operation of an orderly, fair and properly informed securities market;
- (j) regulate the manner of trading and the range of securities traded on securities exchanges;
- (k) take all reasonable steps to safeguard and protect the interests of investors in securities and to suppress illegal, dishonourable and improper practices in dealings in securities and in providing advice or other services relating to securities;
- (l) co-operate with and assist other regulatory authorities that are concerned with securities or with operations of companies;
- (m) exercise and perform such other duties as may be conferred or imposed upon it.

Article 7

PLACE OF OFFICE AND ESTABLISHMENT OF AGENCIES

- (1) The Commission shall have its principal office in one of the Member territories as the Council may by majority vote determine.
- (2) The Commission may establish agencies and may appoint agents in any Member territory and elsewhere.

Article 8

ADDRESS AND SERVICE OF DOCUMENTS

- (1) The Commission shall at all times have a fixed address in one of the Member territories for the service of documents on the Commission.
- (2) All documents to be served on the Commission may be served by leaving the same at or by sending the same by registered post to the Commission at its fixed address.
- (3) The address for service of documents on the Commission shall be published in the Official *Gazette* of the Member territories.

Article 9

PROTECTION OF PERSONS DEALING WITH THE COMMISSION AND ITS AGENTS

- (1) A person who deals with the Commission shall not be affected by any irregularity of procedure in connection with the authorisation of the transaction by a meeting of the Commission or by the non-fulfilment of any condition imposed by this Agreement in connection with the transaction.
- (2) A person who deals with another person who is held out by the Commission as having authority to act on the Commission's behalf in connection with any transaction may treat the Commission as bound by the acts of that other person done within the apparent authority of that person even though that person has not been authorised by the Commission to do those acts on its behalf so long as that person has no knowledge whether actual or constructive, that that other person has not been so authorised by the Commission.

Article 10

CUSTODY AND USE OF COMMON SEAL

- (1) The Commission shall have a Common Seal.
- (2) The Commission shall provide for the safe custody of the Common Seal of the Commission.

(3) The Common Seal of the Commission shall be affixed to instruments pursuant to a resolution of the Commission and by and in the presence of—

- (a) the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson; and
- (b) one other Commissioner or the Secretary.

(4) All documents made by the Commission other than those required by law to be under Seal and all decisions of the Commission may be signified under the hand of the Chairperson, the Deputy Chairperson or the Secretary.

Article 11

OFFICIAL SEAL

(1) The Commission shall have an Official Seal, which shall be a facsimile of its Common Seal, for use in any Member territory other than where the principal office of the Commission is situated, with the addition on its face of the name of every Member territory where it is to be used.

(2) The Official Seal when duly affixed to a document has the same effect as the Common Seal of the Commission.

(3) The Commission may by writing under its Common Seal, authorise any person appointed for the purpose in a Member territory to affix the Official Seal to any deed or other document to which the Commission is a party in the Member territory.

(4) The person affixing the Official Seal shall certify in writing the date on which and the place at which it is affixed.

PART 3

MEMBERS OF THE COMMISSION

Article 12

COMPOSITION OF COMMISSION

(1) The Commission shall consist of five (5) Commissioners who shall be appointed by the Monetary Council by majority vote.

(2) The appointments made under this article shall comprise the following—

- (a) two (2) Commissioners from persons nominated by the Member territories;
- (b) two (2) Commissioners from persons nominated by the Chambers of Industry and Commerce, the Institutes of Chartered Accountants and the Bar Associations or from such other relevant professional bodies of the Member territories; and
- (c) one (1) Commissioner nominated by the Central Bank.

(3) Persons nominated as Commissioners shall be persons of recognised standing and experience in securities and related matters or in any one of the following areas—

- (a) law;
- (b) accountancy;
- (c) banking;
- (d) economics;
- (e) commerce and industry; or
- (f) finance.

(4) The Commissioners shall be paid such remuneration as may be determined by the Monetary Council.

Article 13

CHAIRPERSON, DEPUTY CHAIRPERSON AND SECRETARY

(1) Two of the members of the Commission shall, in and by the terms of their respective appointments by the Monetary Council, be appointed as the Chairperson and Deputy Chairperson of the Commission.

(2) The Commission shall appoint a suitable person to serve as Secretary to the Commission.

Article 14

APPOINTMENT OF COMMISSIONERS TO BE NOTIFIED IN THE *GAZETTE*

The appointment of all Commissioners including the Chairperson, Deputy Chairperson and the termination of any such appointment shall be published in the Official *Gazette* of the Member territories.

Article 15

TERMS OF OFFICE OF CHAIRPERSON, DEPUTY CHAIRPERSON AND OTHER COMMISSIONERS

(1) The Chairperson of the Commission shall hold office for a period of 5 years from the date of appointment as a Commissioner.

(2) The Deputy Chairperson of the Commission shall hold office for the period as specified in the instrument of appointment.

(3) A Commissioner (other than the Chairperson and the Deputy Chairperson) shall, subject to this Article, hold office for a period of 3 years from the date of appointment as Commissioner: Except that such a Commissioner may be appointed for

a period of less than 3 years so as to assist in providing continuity of experience as a Commissioner.

(4) Upon the expiry of the period of appointment a Commissioner shall be eligible for reappointment.

(5) A Commissioner appointed to fill a vacancy shall hold office for the unexpired term of the predecessor.

Article 16

VACATION OF AND REMOVAL FROM OFFICE OF COMMISSIONERS

(1) The office of a Commissioner is vacated—

- (a) upon the death of the Commissioner;
- (b) if the Commissioner is adjudged bankrupt;
- (c) if the Commissioner is absent from three consecutive meetings of the Commission without its permission or reasonable excuse;
- (d) if the Commissioner is certified by a Medical Board or Tribunal or declared by a Court to be mentally or physically incapable of performing the duties of a Commissioner;
- (e) if the Commissioner is convicted of fraud or any other offence involving dishonesty;
- (f) at any time by the Commissioner resigning from office by letter sent to the Chairperson of the Monetary Council and copied to the Secretary of the Commission.

(2) The Monetary Council may by notice in writing remove from office any member of the Commission whose removal appears to it to be desirable for the effective performance of the Commission of its duties or for the preservation of the integrity of the Commission.

(3) Notice of any removal under paragraph (2) shall be given to the Government of the Member territory or such other body by which the Commissioner was nominated and the Government or such other body shall within 30 days of such notice submit nominations to the Monetary Council for a replacement.

(4) The Commission may act notwithstanding a vacancy among its members or any disability affecting any Commissioner.

Article 17

MEETINGS OF COMMISSION

(1) Meetings of the Commission shall be held as often as may be necessary for the performance of its duties and in any event at least once every quarter, and such meetings shall be held at such places, times and days as the Commission may determine.

(2) Notice of all meetings shall be given to each Commissioner.

(3) The Chairperson of the Commission may at any time call a meeting of the Commission and shall call a special meeting to be held within 7 days of the receipt of a written request for that purpose addressed to the Chairperson by not less than two Commissioners.

(4) At a meeting of the Commission—

(a) the Chairperson of the Commission shall preside;

(b) if the Chairperson of the Commission is not present, the Deputy Chairperson shall preside; or

(c) if neither the Chairperson of the Commission nor the Deputy Chairperson is present, the members present shall choose one of their number to preside.

(5) The quorum for a meeting of the Commission is three (3) Commissioners.

(6) Every question for decision at a meeting of the Commission shall be determined by a majority of votes of the members present and, in the event that voting is equally divided, the Chairperson of the meeting shall have a casting vote.

(7) A Commissioner shall be deemed to be present at a meeting of the Commission or of a committee if the Commissioner participates by telephone or other electronic means and all Commissioners participating in the meeting are able to hear each other.

(8) A resolution in writing signed by all the Commissioners entitled to receive notice of a meeting of the Commission or of a committee of the Commission shall be valid and effectual as if it had been passed in a meeting of the Commission or (as the case may be) a committee of the Commission duly convened and held and may consist of several documents in the like form each signed by one or more Commissioners.

(9) Minutes of each meeting of the Commission shall be kept and shall be confirmed by the Commissioners as soon as practicable at a subsequent meeting.

Article 18

ADMINISTRATION

(1) The Commission shall organise and regulate its administration, procedure and business in such manner as it considers will best ensure the performance of its functions and the proper exercise of its powers.

(2) The Commission may make rules governing its own procedure and such rules shall be binding on the Commission.

Article 19

COMMITTEES

(1) The Commission may, in the exercise of its duties establish standing or special committees and may refer or assign to a committee any matter for consideration, inquiry or management by the Commission.

(2) The Commission may appoint a person to be a member of a committee whether that person is a member of the Commission or not, and may appoint a member of the committee to be the Chairperson:

Provided that where a member of the Commission has been appointed to serve on a committee that member shall be the Chairperson of the committee.

(3) Any reference or assignment under paragraph (1) and every appointment under paragraph (2) may be withdrawn or revoked by the Commission at any time, and no such reference or assignment shall prevent the exercise by the Commission of any of its duties.

(4) Subject to paragraph (2), a committee established under this Article may elect one of its members to be the Chairperson and, subject to any specific or general direction of the Commission, may regulate its own procedure and business.

(5) Meetings of a committee shall be held at such times and places as the Chairperson of that committee may determine or as the Commission may direct.

(6) Each committee shall keep minutes of its meetings and shall keep the Commission informed of its activities.

Article 20

DELEGATION

(1) The Commission may delegate any of its duties, other than its power to delegate under this Article to—

- (a) a committee established under Article 19; or
- (b) any body or authority approved by the Monetary Council.

(2) The Commission may revoke a delegation.

(3) A delegation under this Article does not preclude the exercise by the Commission of any of the duties so delegated.

Article 21

DISCLOSURE OF INTEREST

(1) A Commissioner who is in any way interested, whether directly or indirectly, in any transaction or arrangement with the Commission or in which the Commission is interested or whose material, pecuniary or proprietary interest in a company, partnership, undertaking or other business is likely to be affected by a

decision of the Commission shall disclose the nature of his interest at the first meeting of the Commission at which he is present after the relevant facts come to his knowledge.

(2) A disclosure under paragraph (1) shall be recorded in the minutes of the meeting and after the disclosure the Commissioner making it shall not vote on the matter and, unless the Commission otherwise directs, shall not be present or take part in the proceedings of any meeting at which the matter is being discussed or decided by the Commission.

(3) A Commissioner shall be treated as having an indirect interest in any transaction or arrangement with the Commission or in which the Commission is interested if he is a director, shareholder, trustee, agent or employee of the company or undertaking that is a party to the contract or proposed contract with the Commission or where his spouse, parent, child, step-child, brother or sister or the parent, child, step-child, brother or sister of his spouse holds an interest in that company or undertaking.

(4) For the purpose of this Article, a general notice given to the Commission by a Commissioner to the effect that he is a member of or otherwise associated with a specified company or undertaking and is to be regarded as interested in any contract which may after the date of the notice be made with that company or undertaking shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

Article 22

STAFF

(1) The Commission may employ, on such terms and conditions as it thinks fit, such professional, technical and other officers, and such other staff, as may be necessary for the exercise and discharge of its duties.

(2) The Secretary shall assist the Commission in all respects and in such manner as the Commission may from time to time require in the discharge of its duties.

Article 23

CONFIDENTIALITY

(1) Every member, officer and employee of the Commission shall—

- (a) at all times preserve and aid in preserving confidentiality with regard to all matters coming to his knowledge in the performance of his duties; and
- (b) except for the purpose of the performance of his duties or under legal obligation, not at any time, communicate any confidential matter to any person nor permit, unless under legal obligation, any person to have access to any records in the possession, custody or control of the Commission.

(2) Every member, officer and employee of the Commission shall be required to take an oath of secrecy.

PART 4

FINANCIAL MATTERS

Article 24

FUNDING

The Commission shall be funded by—

- (a) the payment to the Commission of any fees or other charges in relation to—
 - (i) an application to the Commission for any licence, authorisation, approval, exemption, waiver or modification;
 - (ii) any duties exercised by the Commission or by a committee established by the Commission;
 - (iii) the approval of prospectuses;
 - (iv) the monitoring of the continuing disclosure obligations of issuers;
 - (v) anything done in the performance of a function relating to take-overs;
 - (vi) any other matter for which provision is made under the Act;
- (b) the payment to the Commission of a levy, as may be prescribed, in respect of every purchase and sale of securities recorded by a securities exchange or notified under its rules;
- (c) such sums of money or such other assets as may accrue to or vest in the Commission from time to time, whether in the course of the exercise of its duties or otherwise; and
- (d) such sums as may be paid to the Commission from time to time by a Participating Government by way of appropriation or subvention.

Article 25

RESERVE FUND

- (1) The Commission may establish a Reserve Fund into which may be paid—
 - (a) fees, levies or any penalties imposed or charged under the Act;
 - (b) any sums appropriated by a Participating Government for this purpose; and
 - (c) any other sums which the Commission with the approval of the Monetary Council may determine.
- (2) The Commission may withdraw any funds from the Reserve Fund for the purpose of exercising its duties under the Act.

(3) The funds in the Reserve Fund may be invested by the Commission on such terms and conditions as may be determined by the Commission. Except that the Commission shall not invest its funds in securities offered by any person under its supervision or regulation.

(4) No disbursement from the Reserve Fund may be made by the Commission within the first 5 years of the establishment of the Reserve Fund.

Article 26

FINANCIAL YEAR AND ESTIMATES

(1) The financial year of the Commission shall begin on 1 April and end on 31 March in each year, or such other period as the Monetary Council may determine except that the first financial year of the Commission shall begin on the establishment of the Commission under Article 3 and end on the following 31 March or such other date as the Monetary Council may decide.

(2) The Commission shall not later than 31 December in each financial year or at least 3 months before the end of its financial year submit to the Monetary Council for its approval estimates of its income and expenditure for the next financial year.

(3) The Commission shall discharge its functions to ensure that its revenue is not less than sufficient to meet all sums properly chargeable to its revenue account.

(4) Any excess of the revenue of the Commission for any financial year over the sum properly chargeable to its revenue account for that year shall be applied by the Commission for the purposes of the Commission.

(5) Where any deficit arises on the operations of the Commission or is budgeted for in the Estimates of expenditure of the Commission the Participating Governments shall provide a subvention to the Commission to meet the deficit in such proportion as may be determined by the Monetary Council.

Article 27

ACCOUNTS

(1) The Commission shall keep proper accounts and records of its transactions.

(2) The Commission shall, as soon as practicable after the end of each financial year, prepare a statement of the accounts of the Commission for the financial year including an income and expenditure account and balance sheet.

Article 28

AUDITORS AND AUDIT

(1) The Commission shall with the approval of the Monetary Council, appoint auditors.

(2) The Commission shall, as soon as practicable after the end of each financial year, submit the statement of accounts prepared for the year under Article 28 to the auditors for audit.

(3) The auditors shall prepare a report on the accounts and send the report to the Commission who shall, as soon as practicable after its receipt, send a copy of the report and a copy of the statement of accounts to the Monetary Council.

(4) The auditors shall include in the report—

- (a) a statement whether, in their opinion, the income and expenditure account for the financial year to which the report relates give a true and fair view of the Commission's income and expenditure;
- (b) a statement whether, in their opinion, the balance sheet for the financial year gives a true and fair view of the Commission's financial affairs at the end of that financial year.

(5) An auditor appointed by the Commission has a right of access at all reasonable times to the books, accounts, vouchers and other records of the Commission and is entitled to require from officers of the Commission such information and explanations as he considers necessary for the performance of his duties as auditor.

Article 29

ANNUAL REPORT

(1) The Commission shall, not later than 3 months after the end of each financial year of the Commission, prepare and submit a report on its activities during the financial year to the Monetary Council.

(2) The Monetary Council may at any time request the Commission to provide it with information concerning any matter relating to the duties of the Commission and the Commission shall provide the information requested within 14 days of such request.

PART 5

MISCELLANEOUS

Article 30

CONSULTATION AND CO-OPERATION

(1) The Commission shall consult and co-operate with the Central Bank or any other agency that exercises regulatory authority under any enactment over a financial institution, insurance company or other body in order to minimise duplication of effort, to maximise the protection of investors and the interest of the public.

(2) The Commission may co-operate with any agency of a foreign government in connection with the investigation of a contravention of the Act or any similar written law whether the activities in question occurred within or outside a Member territory.

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

Article 31

RULES

- (1) The Commission may make rules—
- (a) respecting the calling of and conduct of business at meetings of the Commission;
 - (b) respecting procedures for the initiation and holding of hearings by the Commission in accordance with the Act;
 - (c) respecting the procedure for appeals and review of orders of its delegates and self regulatory organisations;
 - (d) with the approval of the Monetary Council, establishing a code of conduct governing the activities of Commissioners and the officers and employees of the Commission in order to avoid conflicts of interest and other practices that the Commission considers undesirable;
 - (e) respecting any other matter relating to the organisation, procedure, administration or practice of the Commission.

(2) As soon as practicable after the making of any rules, the Commission shall submit a copy of same to the Monetary Council.

Article 32

AMENDMENTS

(1) An amendment to the Agreement may be proposed to the Monetary Council by the Commission and shall be effective when it is agreed to by all the Participating Governments.

(2) All amendments to the Agreement shall be published in the official *Gazette* of Member Territories.

Article 33

DISPUTES

(1) Any dispute between the Participating Governments concerning this Agreement or between the Commission and a Participating Government, shall be submitted to arbitration by a tribunal of arbitrators appointed pursuant to paragraph (2).

- (2) (a) If the dispute is between only two parties, each party shall be entitled to appoint one arbitrator, and the two parties shall together appoint a third arbitrator, who shall be the Chairperson of the tribunal.

- (b) If the dispute is between three or more parties, each party shall be entitled to appoint one arbitrator and all the parties shall together appoint an additional arbitrator, who shall be the Chairperson of the tribunal.
- (3) If, within 30 days of receipt of the request for arbitration, any party has not appointed an arbitrator or if within 30 days of the appointment of the arbitrators the parties have not appointed the third arbitrator or, as the case may be, the additional arbitrator, any party to the dispute may request the Chief Justice of the Eastern Caribbean States Supreme Court, or such other person of authority as may be prescribed by the Monetary Council to make the required appointment.
- (4) The procedure of the tribunal shall be fixed by the arbitrators, but the Chairperson of the tribunal shall have full power to settle all questions of procedure in any case of disagreement with respect thereto.
- (5) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties.
- (6) The Chairperson of the tribunal shall be entitled to vote, and in the event of a tie, the Chairperson shall have a casting vote.

Article 34

IMMUNITIES AND PRIVILEGES

- (1) To enable the Commission to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Commission in the territory of each Participating Government.
- (2) The Commission, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings by the terms of any contract.
- (3) Property and assets of the Commission shall be immune from search, requisition, confiscation, expropriation or any other form of seizure.
- (4) The archives of the Commission shall be inviolable.
- (5) To the extent necessary to carry out the provisions of this Agreement, all property and assets of the Commission shall be free from restrictions, regulations, control and moratoria of any nature.
- (6) The official communications of the Commission shall be accorded by Participating Governments the same treatment as the official communications of other Participating Governments.
- (7) The Commissioners, officers and employees of the Commission—
- (a) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Commission waives this immunity;

- (b) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchanges restrictions as are accorded by Participating Governments to the representatives, officials and employees of comparable rank of other Participating Governments;
- (c) shall be granted the same treatment in respect of travelling facilities as is accorded by Participating Governments to representatives, officials and employees of comparable rank of other Participating Governments.
- (8) (a) The Commission, its assets, property, income and its business, shall be immune from all taxation and from all customs duties in respect of goods acquired by, or service rendered to it for its own use. The Commission shall also be immune from liability for the collection or payment of any tax duty in respect thereof except when it resells a good acquired by it to a member of the public.
- (b) No tax shall be levied on or in respect of salaries or emoluments, including pensions and gratuities, paid by the Commission to the Commissioners, officers and employees of the Commission.

Article 35

ACCESSION

(1) After the entry into force of this Agreement, a territory which is not a signatory to this Agreement may in the discretion of the Monetary Council be permitted to accede to this Agreement on such terms and conditions as the Monetary Council may determine.

(2) Any such territory shall deposit on or before a date appointed by the Monetary Council an Instrument of Accession with the Commission which shall signify such deposit and the date thereof to the parties to this Agreement.

Article 36

SIGNATORIES

This Agreement shall be open for signature by any Participating Government.

Article 37

RATIFICATION

This Agreement shall be subject to ratification by the signatory Participating Governments in accordance with their respective constitutional procedures. Instruments of Ratification shall be deposited with the Director General of the Organisation of Eastern Caribbean States who shall transmit certified copies to each Participating Government.

Article 38

ENTRY INTO FORCE

This Agreement shall enter into force upon the deposit of five Instruments of Ratification and Participating Governments undertake to take all steps necessary for the implementation of this Agreement.

IN WITNESS WHEREOF the representatives of the Participating Governments being duly authorised in their behalf, have signed this Agreement.

DONE AT Old Town, Montserrat this 24th day of November 2000.

Signed by
For the Government of Anguilla

Signed by LESTER BIRD
For the Government of Antigua and Barbuda

Signed by PIERRE CHARLES
For the Government of the Commonwealth of Dominica

Signed by KEITH C MITCHELL
For the Government of Grenada

Signed by DAVID S BRANDT
For the Government of Montserrat

Signed by DENZIL DOUGLAS
For the Government of Saint Christopher and Nevis

Signed by KENNY ANTHONY
For the Government of Saint Lucia

Signed by ARNHIM EUSTACE
For the Government of Saint Vincent and the Grenadines

SECURITIES (ADVERTISEMENTS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
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 Commission
8. Contravention

SCHEDULE

Paragraph

1. Prominence of required statements
2. Advertisements to be clear and not misleading
3. Advertisements to be distinguished from other matter
4. Promotions to be genuine
5. Advertisements not to imply Government or Commission approval
6. Advertisements giving an overview of investment securities to be fair
7. Comparison with other investments or services
8. Taxation
9. Past performance
10. Indications of the scale of business activities
11. Risk warnings
12. Guaranteed returns
13. Dating
14. Identification of advertiser

SECURITIES (ADVERTISEMENTS) REGULATIONS - SECTION 175

(S.R.O. 21/2002)

Commencement

[28 February 2002]

Short title

1. These Regulations may be cited as the Securities (Advertisements) Regulations.

Interpretation

2. (1) In these Regulations—

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

“**authorised person**” means a person specifically authorised in writing by the Commission in respect of securities business;

“**securities advertisement**” means any advertisement for or in connection with securities investment or securities business.

(2) For the purposes of these Regulations an advertisement issued outside Montserrat shall be treated as issued in Montserrat if—

- (a) it is directed to persons in Montserrat; or
- (b) it is made available to persons in Montserrat otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside Montserrat or in a sound or television broadcast transmitted principally for reception outside Montserrat.

Restrictions on advertising

3. Subject to regulation 4, only persons who are licensed by the Commission in respect of securities business, or an authorised person, shall issue or cause to be issued a securities advertisement in Montserrat.

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 of Montserrat or the government of any country or territory outside Montserrat; or
 - (ii) the central bank of any country or territory; or
- (b) an advertisement which is a prospectus approved by the Commission.

Advertisements to comply with Schedule

5. No licensee or authorised person, shall issue or cause to be issued, whether in Montserrat or elsewhere, a securities advertisement unless the requirements of the Schedule are complied with in relation to that advertisement.

Advertisement directions

6. (1) If the Commission considers that a securities advertisement issued, caused to be issued or proposed to be issued by a licensee or authorised person is misleading, the Commission may by notice in writing give the licensee or authorised person a direction under this regulation.

(2) A direction under this regulation may contain all or any 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 must be modified in a specified manner;
- (c) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions 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 Commission.

Advertisements to be copied to the Commission

7. (1) A licensee or an authorised person shall, fourteen days prior to the date of first use, forward to the Commission a copy of every securities advertisement issued or caused to be issued by a licensee or an authorised person together with the advertisement filing fee set out in the Third Schedule to the Securities (Licences and Fees) Regulations.

(2) If on receipt the Commission is not satisfied that the advertisement is in accordance with these Regulations the Commission shall before the date of first use require the licensee or the authorised person to make amendments as proposed by the Commission.

Contravention

8. A person who issues or causes to be issued in Montserrat a securities advertisement that is a prohibited issue under regulation 3, or does not comply with regulation 5, commits an offence and is liable on conviction to a fine of \$50,000.

SCHEDULE

(Regulation 5)

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 must not be disguised—

- (a) through lack of prominence in relation to the remainder of the advertisement; or
- (b) 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 appear in a context that 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 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 matter to which a securities advertisement relates is available—

- (a) in limited quantities;
- (b) for a limited period; or
- (c) on special terms for a limited period,

the advertisement may say so but, if that is not the case, the advertisement must 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 must be issued with the object of promoting the securities investment, securities business or person to which it relates.

(2) Where the medium in which an advertisement is carried contains or presents other matter the advertisement must be distinguished from that other matter so that the advertisement clearly appears as an advertisement.

Promotions to be genuine

4. No securities advertisement shall be issued with the intention of persuading persons who respond to the advertisement to enter into an agreement, or use business services, of a description not mentioned in the advertisement.

Advertisements not to imply Government or Commission approval

5. A securities advertisement must not contain any matter that states or implies that the securities investment or securities business that is the subject of the advertisement or any matter in the advertisement has the approval of a Government department or of the Commission.

Advertisements giving an overview of investment securities to be fair

6. A securities advertisement that states only some of the rights and obligations of an investment in securities or only some of the terms and conditions of an agreement relating to securities investment must—

- (a) state a sufficient amount to give a fair view of the nature of 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 how a written statement of all of them can be obtained.

Comparison with other investments or services

7. A securities advertisement must 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 must contain a warning that the levels and bases of taxation can change.

(2) A securities advertisement that contains any matter based on an assumed rate of taxation must state what that rate is.

(3) A securities advertisement that refers to a relief from taxation must—

- (a) state that the relief is that which currently apply; and
- (b) contain a statement that the value of a relief from taxation depends upon the circumstances of the tax payer.

Past performance

9. A securities advertisement must 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 being advertised;
- (b) the source of the information is stated;
- (c) if the whole of the 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 relates;
- (d) if the information is presented in the form of a graph or chart, no part of the information is omitted so as to give a misleading impression of the rate at which variable quantities or amounts have changed;
- (e) the period which is selected as illustrating past performance is a period of not less than three years which period must end no more than three months before the date of the issue of the advertisement; and
- (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 must not contain any statement indicating—
- (a) the scale of the activities; or
 - (b) the extent of the resources of the advertiser, or of any group of which the advertiser is a member,

so as to imply that the resources available to support the performance of the advertiser's obligations are greater than they are.

(2) Statements that relate to resources of members of a group other than the advertiser shall clearly state that fact.

Risk warnings

11. (1) A securities advertisement must contain a statement in accordance with this clause warning of the risks involved in acquiring or holding the securities being advertised.

(2) The statement of an advertisement, relating to a security that can fluctuate in value in money terms, must draw attention to that fact and to the fact that the investor may not get back the amount invested.

(3) The statement of an advertisement, offering a security likely to yield a high income or as being suitable for an investor particularly seeking income from the investment, must draw attention to that fact and that income from the investment may fluctuate in value in money terms.

(4) The statement of an advertisement, which relates to a security denominated in a currency other than that of the country where the advertisement is issued, must 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) The statement of an advertisement, that contemplates the investor entering into a transaction the nature of which is such that the investor may not only lose what is paid at the outset but may incur a liability to pay unspecified additional amounts later, must draw attention to the fact that the investor may or, as the case may be, will have to pay more money later and that accordingly a transaction in that security can lose the investor more than the first payment.

(6) If a security—

- (a) is not traded on an established securities market, the statement must draw attention to the fact that there is no established market for the security so that it may be difficult for the investor to sell the security or for him to obtain reliable information about its value or the extent of the risks to which it is exposed; and
- (b) is traded on an established securities market, but is dealt in so irregularly or infrequently, that there can be no certainty that a price of that security will be quoted at all times; or that it may be difficult to effect transactions at any price that may be quoted, the statement must draw attention to that fact.

Guaranteed 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 Commission prior to its issue.

Dating

13. (1) A securities advertisement in a newspaper publication must state in the bottom right hand corner of the advertisement the date on which it was first issued.

(2) A securities advertisement by way of a prospectus, brochure, handout or similar marketing literature must state the date on which it was first issued on the front outside cover page.

(3) A securities advertisement by way of cinematographic film, television broadcast, or computer output must bear the date on which it was first issued prominently at the beginning or end of the advertising material.

Identification of advertiser

14. (1) A securities advertisement shall identify the licensee or authorised person who issues or causes the advertisement to be issued, and shall identify the person on whose behalf the advertisement is issued if different from the licensee or authorised person.

(2) Registered principals shall approve, initial and date each advertisement or item of sales literature before the date of first use of the material.

SECURITIES (PROSPECTUS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
2. Interpretation
3. Exemptions
4. Form and content of prospectus
5. Exceptions
6. Advertisements in connection with public offer

SCHEDULE: Form and Content of Prospectus

Part 1 General requirements

Part 2 The persons responsible for the prospectus and advisers

Part 3 The securities to which the prospectus relates and the offer

Part 4 General information about the issuer and its capital

Part 5 The issuer's principal activities

Part 6 The issuer's financial position

Part 7 The issuer's administration and management

Part 8 Recent developments in the issuer's business and prospects

SECURITIES (PROSPECTUS) REGULATIONS - SECTION 175

(S.R.O. 22/2002)

Commencement

[28 February 2002]

Short title

1. These Regulations may be cited as the Securities (Prospectus) Regulations.

Interpretation

2. In these Regulations—

“**director**” includes any person who occupies the position of a director, by whatever name called;

“**prospectus**” means a prospectus or draft prospectus approved by the Commission under the Act; and

“**securities exchange**” means a securities exchange licensed by the Commission.

Exemptions

3. (1) A public offer of securities shall not be required to be the subject of a prospectus if any one of the conditions specified in subregulation (2) is satisfied in relation to the offer.

- (2) The following are the conditions specified—

- (a) the securities offered are not generally advertised to the public;
- (b) the securities are offered in connection with a bona fide invitation to enter into an underwriting agreement with respect to them;
- (c) the securities are offered by the issuer to—
 - (i) members or employees of the issuer;
 - (ii) members of the families of any such members or employees; or
 - (iii) holders of debentures of the issuer;
- (d) the total consideration payable for the securities cannot exceed \$25,000 even in the case where the offering is made pursuant to paragraph (c);
- (e) the securities are shares and are offered free of charge to any or all of the holders of shares in the issuer.

- (3) If a class of shares has been admitted to dealings on a securities exchange, the Commission may authorise the making of an offer without a prospectus, provided that—

- (a) the number or estimated market value of the shares amounts to less than 10% of the number or of the corresponding market value of shares of the same class already admitted to dealings; and

- (b) up-to-date information equivalent to that required by this regulation is available as a result of the requirements of that exchange.

Form and content of prospectus

4. (1) A prospectus must contain all information that investors and their professional advisers would reasonably require and expect to find there, for the purpose of making an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses, purpose or use of proceeds, risk of offering and prospects of the issuer of the securities; and
- (b) the rights attaching to those securities.

(2) In particular a prospectus must contain, subject to regulation 5 and to sub-regulations (4) and (5), the information specified in the Schedule.

(3) The information in a prospectus shall be presented in as easily analysable and comprehensible a form as possible.

(4) If, on the occasion of their admission to dealings on a securities exchange, shares are offered on a pre-emptive basis to some or all of the existing shareholders, the Commission may authorise the omission from a prospectus of specified information 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 exchange.

(5) Where a person—

- (a) makes an offer to the public in Montserrat of securities which the person proposes to issue; and
- (b) has, within the twelve months preceding the date on which the offer is first made, published a full prospectus relating to a different class of securities which the person has issued, or to an earlier issue of the same class of securities,

the person may publish, instead of a full prospectus, a prospectus which contains only the differences which have arisen since the publication of that full prospectus and which are likely to influence the value of the securities, provided that the prospectus is accompanied by that previously published full prospectus.

(6) For the purposes of subregulation (5), a “**full prospectus**” is one that contains the information specified in the Schedule (other than information whose omission is authorised by the Commission by or under subregulation (4) or regulation (5)).

Exceptions

5. The Commission may authorise the omission from a prospectus of information whose inclusion would otherwise be required by these Regulations if the Commission 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 prospects; or
- (c) disclosure of that information would be seriously detrimental to the issuer and its omission would not be likely to mislead investors with regard to facts and circumstances necessary for an informed assessment of the securities.

Advertisements in connection with public offer

6. No advertisement shall be issued to the public in Montserrat announcing a public offer of securities for which a prospectus is required under these Regulations by the person proposing to make the offer unless the advertisement states that—

- (a) the Commission has approved the prospectus relating to the public offer; and
- (b) a prospectus is or will be published, as the case may be, and gives an address in Montserrat from which it can be obtained or will be obtainable.

SCHEDULE

(Regulation 4)

FORM AND CONTENT OF PROSPECTUS

PART 1

GENERAL REQUIREMENTS

1. The name of the issuer, the address of its registered office and the date and location of incorporation.
2. The names and functions of the directors of the issuer.
3. The date of publication of the prospectus.
4. A statement that a copy of the prospectus has been delivered to the Commission for approval in accordance with these Regulations.
5. A statement that the prospectus has been drawn up in accordance with these Regulations.
6. 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 2

THE PERSONS RESPONSIBLE FOR THE PROSPECTUS AND ADVISERS

7. The names, addresses (home or business) and functions of those persons responsible for the prospectus or any part of the prospectus, specifying the part.

8. 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 makes no omission likely to affect the import of the information.

PART 3

THE SECURITIES TO WHICH THE PROSPECTUS RELATES AND THE OFFER

9. A description of the securities being offered, including the class to which they belong and a description of the rights attaching 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.

10. The dividend policy of the issuer, and in particular whether it has paid 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.

11. The date(s) (if any) on which entitlement to dividends or interest arises.

12. The procedure for the exercise of any right of pre-emption attaching to the securities.

13. Any restriction on the free transferability of the securities being offered.

14. (1) A statement as to whether—

(a) the securities being offered have been admitted to dealings on a licensed securities exchange; or

(b) an application for such admission has been made.

(2) If no application for dealings has been made, or 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 the arrangements.

15. The purpose for which the securities are being issued.
16. The number of securities being issued.
17. The number of securities being offered.
18. The total proceeds expected to be raised by the offer and the expected net proceeds, after deduction of the expenses, of the offer.
19. Details as to the use of the proceeds of the issue and in particular their use for capital expenditure, debt reduction, acquisitions, working capital or other.
20. Where the prospectus relates to shares 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 shares 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;
 - (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 shares in the issuer;
 - (iii) the repayment of any money borrowed by the issuer in respect of any of the foregoing matters;
 - (iv) working capital; and
 - (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 any persons underwriting or guaranteeing the offer.
22. 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 the 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 the securities.
23. The names and addresses of the paying agents (if any).
24. The period during which the offer of the securities is open.
25. The price at which the securities are offered or, if appropriate, the procedure, method and timetable for fixing the price.
26. The arrangements for payment for the securities being offered and the arrangements and timetable for their delivery.

27. 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 the monies.

PART 4

GENERAL INFORMATION ABOUT THE ISSUER AND ITS CAPITAL

28. The date and place of incorporation of the issuer. In the case of an issuer not incorporated in Montserrat, the address of its principal place of business in Montserrat.

29. The legal form of the issuer, the legislation under which it was formed and (if different) the legislation now applicable to it.

30. A summary of the provisions in the issuer's constitution determining its objects.

31. The amount of the issuer's authorised share capital and any limit on the duration of the authorisation to issue share capital.

32. The amount of the issuer's issued share capital.

33. The number and particulars of any listed and unlisted securities issued by the issuer not representing share capital.

34. The number of shares of each class making up each of the authorised and issued share capital, the nominal value of the shares and, in the case of the issued share capital, the amount paid up on the shares.

35. 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.

36. 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 5

THE ISSUER'S PRINCIPAL ACTIVITIES

37. A description of the issuer's principal activities and any exceptional factors that have influenced its activities.

38. A statement of any dependence of the issuer on patents or other intellectual property rights, licences or particular contracts, where any of these are of fundamental importance to the issuer's business.

39. With regard to risk factors —

(a) list in order of importance the factors which the issuer considers to be the most substantial risks to an investor in this offering amongst them the following—

(i) untested products;

- (ii) cash-flow or liquidity problems;
 - (iii) dependence upon a key supplier or customer;
 - (iv) management inexperience;
 - (v) nature of business;
 - (vi) absence of a trading market; and
- (b) state which constitute the greatest threat that an investment may be lost in whole or part, or not provide an adequate return.
40. Information regarding investments in progress where they are significant.
41. 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 6

THE ISSUER'S FINANCIAL POSITION

42. Subject to regulation 44, 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 that statement;
 - (b) the names and addresses of the auditors of the accounts;
 - (c) a copy of the auditor's 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.
43. (1) If 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 regulation 42, there shall also be included in the prospectus—
- (a) a report by a person qualified to act as an auditor, covering the period referred to in subregulation (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
 - (b) a statement by the person preparing the report that the person consents to the inclusion of the report in the prospectus and accepts responsibility for it; or
 - (c) a statement why the person preparing the report 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 regulation 42 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.

44. 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 that person's opinion it gives a true and fair view of the state of affairs and profit or loss of the issuer and that the person consents to the inclusion of the report in the prospectus and accepts responsibility for it; or a statement why the person is unable to make such a statement.

45. If the issuer is a parent company, the requirements of regulations 42 and 44 shall apply to each of its subsidiaries.

PART 7

THE ISSUER'S ADMINISTRATION AND MANAGEMENT

46. 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.

47. 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.

48. 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.

49. 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.

50. (1) A description (being the qualifications 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 subregulation (1).

(4) Indicate each director or proposed director that holds any other directorship.

PART 8

RECENT DEVELOPMENTS IN THE ISSUER'S BUSINESS AND PROSPECTS

51. The significant recent trends concerning the development of the issuer's business since the end of the last completed financial year of the issuer.

52. Information on the issuer's financial and trading prospects for at least the current financial year of the issuer.

53. The dates of and parties to all material contracts (not being contracts entered into in the ordinary course of business) entered into by the issuer and its subsidiaries within the two years immediately preceding the issue of the prospectus together with a summary of the principal contents of the contracts.

54. Where a profit forecast appears in the prospectus the principal assumptions, including commercial assumptions that the forecast is based on must be stated.

SECURITIES (LICENCES AND FEES) REGULATIONS

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

REGULATION

1. Short title
2. Interpretation

PART 2

LICENCES

3. Applications and notices
4. Directions in forms
5. Manner of application for licence
6. Alteration of facts disclosed in applications
7. Grant of licence
8. General conditions
9. Renewal of licence
10. Replacement of licence
11. Display of licence
12. Change of employer by representative

PART 3

OTHER FEES

13. Securities exchange licence fee
14. Proposed rule change fee
15. Examination fee
16. Clearing agency licence fee
17. Advertisement filing fee
18. Self regulatory organisation fee
19. Registration of corporate issuers fee
20. Authorisation of collective investment scheme fee
21. Waiver of fees

SCHEDULE 1: List of Forms

SCHEDULE 2: Forms

SCHEDULE 3: Fees

SECURITIES (LICENCES AND FEES) REGULATIONS - SECTION 175

(S.R.O.s. 23/2002 and 37/2003)

Commencement

[28 February 2002]

PART 1

PRELIMINARY

Short title

1. These Regulations may be cited as the Securities (Licences and Fees) Regulations.

Interpretation

2. In these Regulations —

“financial year” means—

- (a) the period of twelve months beginning with the day on which a licensee commences to carry out business in respect of which a licence has been granted; and
- (b) each subsequent period of twelve months beginning with the day following the day an annual balance sheet of a licensee is prepared for the purpose of these Regulations; and

“licence” in relation to Parts 1 and 2, means a licence under Part 4 of the Act and “licensee” shall be construed accordingly.

PART 2

LICENCES

Applications and notices

3. An application or a notice for any of the purposes described in the first column of Schedule 1 must be on the form as numbered in the second column of Schedule 1 and as set out in Schedule 2.

Directions in forms

4. A form set out in Schedule 2 must be completed in accordance with any directions specified in the form.

Manner of application for licence

5. (1) An application for a licence in the form set out in Schedule 2 together with any relevant annexures must be enclosed in a sealed envelope and filed with the Commission.

(2) Each application for a licence 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); and
- (b) a copy of the report of the auditors certified as required in (a); and
- (c) a copy of its Memorandum and Articles of Association.

(3) The Commission may refuse to accept an application made under these Regulations if it is not accompanied by the application fee set out in Schedule 3.

Alteration of facts disclosed in applications

6. An applicant for a licence shall forthwith give written notice to the Commission 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 Commission in relation to the application, being a proposal or event made or occurring while the application is pending a decision by the Commission.

Grant of licence

7. The Commission on approval of an application for a licence, shall grant a licence to the applicant on payment by the applicant of the licence fees set out in Schedule 3.

General conditions

8. It shall be a condition of every licence that—

- (a) the licence shall be personal to the applicant and shall not be transferable;
- (b) the applicant shall forthwith give written notice to the Commission of—
 - (i) any proposed alteration to; or
 - (ii) the occurrence of any event which the applicant knows affects or may affect in any material respect,

any matter in respect of which the applicant was required to supply information to the Commission in the course of the application for that licence;

- (c) the consent of the Commission shall be obtained prior to—
 - (i) the implementation of any alteration of the kind referred to in paragraph (b)(i); or

- (ii) the taking of action resulting from any event of the kind referred to in paragraph (b)(ii); and
- (d) a licensee only carries on the securities business permitted by the licence and from the premises specified in the licence.

Renewal of licence

9. On application for renewal of a licence, the Commission, if satisfied that the applicant has complied with the provisions of the Act and these Regulations, may grant the renewal on payment by the applicant of the annual renewal licence fee set out in Schedule 3.

Replacement of licence

10. If the Commission is satisfied that a licence has been lost, destroyed or defaced, the Commission may replace the licence on payment by the licensee of the fee set out in Schedule 3.

Display of licence

11. (1) Every holder of a licence granted under the Act must display the licence at all premises in which it transacts with the public the securities business authorised by the licence.

(2) The requirement in subregulation (1) shall not be satisfied unless the licence is displayed in a manner that is readily visible to the public.

Change of employer by representative

12. A representative must not change the employer in relation to which the licence was issued unless a notice in accordance with Form 9 set out in Schedule 2 is lodged with the Commission.

PART 3

OTHER FEES

Securities exchange licence fee

13. (1) A company applying to the Commission for a securities exchange licence under the Act shall pay the application fee set out in Schedule 3.

(2) If the Commission is satisfied that the applicant has complied with the provisions of the Act it may grant a securities exchange licence on payment by the applicant of the licence fee set out in Schedule 3.

(3) On application for renewal of a securities exchange licence the Commission may, if satisfied that the applicant has complied with the provisions of the Act, grant the renewal on payment by the applicant of the annual renewal licence fee set out in Schedule 3.

Proposed rule change fee

14. A securities exchange shall, on submission to the Commission of a draft proposed amendment to its rules in accordance with the provisions of the Act, pay the fee set out in Schedule 3.

Examination fee

15. An applicant, for a representative, principal or investment adviser licence that is required to take an examination shall pay the examination fee set out in Schedule 3.

Clearing agency licence fee

16. (1) A person applying to the Commission for a clearing agency licence under the Act shall pay the application fee set out in Schedule 3.

(2) If the Commission is satisfied that the applicant has complied with the provisions of the Act, it may grant a clearing agency licence on payment by the applicant of the licence fee set out in Schedule 3.

(3) On application for renewal of a clearing agency licence the Commission may, if satisfied that the applicant has complied with the provisions of the Act, grant the renewal on payment by the applicant of the annual renewal licence fee set out in Schedule 3.

Advertisement filing fee

17. A licensee or authorised person shall when sending a copy of an advertisement to the Commission pursuant to the Act and its regulations, pay the advertisement filing fee set out in Schedule 3.

Self regulatory organisation fee

18. (1) A person applying to the Commission for a self regulatory organisation licence under the Act shall pay the application fee set out in Schedule 3.

(2) If the Commission is satisfied that the applicant has complied with the provisions of the Act, it may grant a self regulatory organisation licence on payment by the applicant of the licence fee set out in Schedule 3.

(3) On application for renewal of a self regulatory organisation licence the Commission may, if satisfied that the applicant has complied with the provisions of the Act, grant the renewal on payment by the applicant of the annual renewal licence fee set out in Schedule 3.

Registration of corporate issuers fee

19. (1) An existing public company required to file a registration statement with the Commission under the provisions of the Act, shall pay the registration fee set out in Schedule 3.

(2) A company which proposes to issue securities to the public and is required to file a registration statement with the Commission under the provisions of the Act, shall pay the registration fee set out in Schedule 3.

Authorisation of collective investment scheme fee

20. (1) The Commission may, if it is satisfied that an application for the authorisation of a collective investment scheme is in accordance with the Act and the Securities (Collective Investment Scheme) Regulations, grant the authorisation of the scheme on payment by the applicant of the authorisation fee set out in Schedule 3.

(2) On application for renewal of the authorisation of a collective investment scheme, the Commission may, if satisfied that the applicant has complied with the Act and the Securities (Collective Investment Scheme) Regulations, grant the renewal on payment by the applicant of the annual renewal authorisation fee set out in Schedule 3.

(3) When making an application to the Commission for the authorisation of a collective investment scheme, the applicant shall pay the application for authorisation fee set out in Schedule 3.

Waiver of fees

21. (1) If the Commission considers it appropriate in the exceptional circumstances of a particular case, the Commission may in its discretion waive payment of all or part of the fee which would otherwise be payable under these Regulations.

(2) If it appears to the Commission that, owing to the exceptional circumstances of a particular case, the retention by the Commission of a fee which has been paid would be inequitable, the Commission may in its discretion refund all or part of the fee.

FIRST SCHEDULE*(Regulation 3)***LIST OF FORMS**

<i>Description of Form</i>	<i>Number of Form in Second Schedule</i>
Application for broker dealer, limited service broker or custodian licence	1
Application by an individual for investment adviser licence	2
Application by a company for investment adviser licence	3
Application for principal or representative licence	4
Register of securities	5
Notice of place at which register is to be kept	6
Notice of change of place of business and change of place at which register is kept	7
Notification of cessation of business	8
Notice of change of representatives employer and notice of change of place at which register is kept	9

SECOND SCHEDULE

(Regulation 3)

FORMS

FORM 1

**APPLICATION FOR BROKER DEALER, LIMITED
SERVICE BROKER OR CUSTODIAN LICENCE**

Application for a broker dealer*, limited service broker* or custodian* licence under the Act is made as follows—

(delete as inapplicable)*

Notes—

1. If space is insufficient to provide details, please attach annexure, and the 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 account certified as required by regulation 5.

PART 1

INFORMATION ON THE APPLICANT

1. (a) Name of applicant: _____
- (b) Registered office: _____
- (c) Place of incorporation: _____
- (d) Full address and telephone number of the principal place at which the business of the applicant is to be carried on: _____
- (e) The authorised and paid-up capital of the applicant, including the types of shares issued: _____

- (f) Details of shareholders of the applicant, including the name, address, amount of shares being held and date of acquisition:

<i>Name</i>	<i>Address</i>	<i>Amount of Shares</i>	<i>Date of Acquisition</i>
1.			
2.			
3.			
4.			

- (g) Address of place at which applicant's register under section 86 of the Act will be kept—

- (h) Set out as an annexure to this application details of each director and senior officer showing the full name, residential address, date of birth, academic qualifications and experience, office held and date of appointment:

- (i) Set out as an annexure to this application details of each (prospective) principal and representative showing full name, date of birth, residential address, academic qualifications and experience:

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 a licence:

(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 its proposed business.

4. Name and address of auditors or proposed auditors:

5. Name and address of attorneys-at-law or proposed attorneys-at-law:

6. Name and address of bankers or proposed bankers:

7. If the company is a subsidiary of another company, give the name, address, nature of business of parent company:

8. Give the name and address of subsidiaries, if any, of the company or any enterprise in which it has a shareholding or similar interest, give details and nature of business pursued:

9. 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.	

10. 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 the space provided. If “Yes”, attach annexure giving all relevant particulars.)

11. Has the applicant or any director, principal or representative of the applicant within the past ten 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 its or his right to carry on any trade, business or profession for which a specific licence, registration or other authority is required by law in any place? _____

12. Has any director, principal or representative of the applicant within the past ten 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 Montserrat 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 the applicant in any civil proceedings, in Montserrat or elsewhere? (If “Yes”, using an annexure, give full details, including whether judgement is unsatisfied.)

(g) been declared bankrupt or compounded with or made an arrangement for the benefit of the applicant’s creditors, in Montserrat 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 Montserrat or elsewhere?
-
- (j) been disqualified as a director, or been director of a company that has gone into receivership or liquidation, in Montserrat or elsewhere?
-

13. 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?

14. 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 ten years:

<i>Name of Director, principal or representative</i>	<i>Name and address of employer (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 dates)</i>

15. 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.

16. Set out below details of two persons with whom each director of the applicant has had regular contact over the past five years and of whom the Commission 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>

PART 2

MISCELLANEOUS

We declare that all information given in this application and in the attached annexure (if any) is complete and accurate to the best of our knowledge and belief.

Dated this _____ day of _____

*Signature

Signature

(Name of Director)

(Name of
Director/Principal)**

Dated this _____ day of _____

Signature

Justice of the Peace/Attorney-at-Law

* *This application is to be signed by two directors, or a director and a principal of the applicant.*

***Delete whichever is inapplicable*

FORM 2

**APPLICATION BY AN INDIVIDUAL FOR
INVESTMENT ADVISER LICENCE**

Application for an investment adviser licence under the Act is made as follows:

Note:

(1) If space is insufficient to provide details, please attach annexure, and the annexure should be identified as such and signed by the signatory to this application.

(2) This application must 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 and telephone number of the principal place at which the business of the applicant is or is to be carried on: _____

(c) Residential address: _____

(d) Address of place at which applicant's register under section 86 of the Act will be kept: _____

2. (a) Indicate area of proposed business for which the applicant requires an investment adviser licence:

advising others concerning securities,

issues or promulgates analyses or reports concerning securities,

pursuant to a contract or arrangement with a customer, undertakes on behalf of the customer (whether on a discretionary authority granted by the customer or otherwise) the management of a portfolio of securities for the purpose of investment.

(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 the 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 the business.
3. The type of customers with whom the applicant proposes to do business.
4. Is the business of investment adviser the principal business carried on by the applicant? (Answer “Yes” or “No”. If “No”, give details of the applicant’s principal business.)
5. 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 5% of the aggregate of the nominal amount of all the issued shares of the company? (Answer “Yes” or “No”. If “Yes”, give full details of the interest including names of companies and percentage of interest.)
6. Is the applicant a director of any company in Montserrat 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 the following questions “Yes” or “No” in space provided. If “Yes”, attach annexure giving all relevant particulars.)

7. Has the applicant within the past ten years— *Answer*
- (a) been licensed or registered in any place under any law which requires licensing or registration in relation to dealing in securities or acting as an 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 the applicant's right to carry on any trade, business or profession for which a specific licence, 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 Montserrat 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).) _____
- (i) had judgement including findings in relation to fraud, misrepresentation or dishonesty been given against the applicant in any civil proceedings, in Montserrat 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 the applicant 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 the applicant's creditors in Montserrat or elsewhere? _____
- (l) being engaged in the management of any company other than a company referred to in answer to question 6? _____
- (m) been refused a fidelity or surety bond in Montserrat or elsewhere? _____
- (n) been disqualified as a director, or been a director of a company that has gone into receivership or liquidation, in Montserrat or elsewhere? _____

8. Set out below details of the applicant's employment and business activities during the previous ten years.

	<i>Name and address of employer (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 (give exact dates)</i>
1.				
2.				
3.				
4.				

9. Set out below details of two persons (who must not be related to the applicant, and neither of whom has any interest in the success or otherwise of this application) with whom the applicant has had regular contact over the past five years and of whom the Commission may enquire regarding the applicant's character and reputation.

	<i>Name</i>	<i>Address</i>	<i>Occupation</i>
1.			
2.			

FORM 3

**APPLICATION BY A COMPANY FOR
INVESTMENT ADVISER LICENCE**

Application for an investment adviser licence under the Act is made as follows:

Notes:

- (1) If space is insufficient to provide details, where necessary, please attach annexure, and the annexure must 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 account certified as required by regulation 5.

PART 1

INFORMATION ON THE APPLICANT

1. (a) Name of applicant: _____
- (b) Registered office: _____
- (c) Place of incorporation: _____
- (d) Full address and telephone number of the principal place at which the business of the applicant is or is to be carried on: _____
- (e) The authorised and paid-up capital of the applicant, including the types of shares issued or to be issued: _____
- (f) The details of shareholders of the applicant, including the name, address, amount of shares being held and date of acquisition

<i>Name</i>	<i>Address</i>	<i>Amount of Shares</i>	<i>Date of acquisition</i>

- (g) Address of place at which applicant's *register* under section 86 of the Act will be kept: _____

- (h) Set out as an annexure to this application details of each director and senior officer showing the full name, residential address, date of birth, academic qualifications and experience, office held and date of appointment.
- (i) Set out as an annexure to this application details of each (prospective) principal and representative showing full name, date of birth, residential address, academic qualifications and experience.
2. State the nature of the principal business of the applicant:
3. (a) Indicate areas of proposed business for which the applicant requires an investment adviser licence:
- advises others concerning securities.
- issues or promulgates analyses or reports concerning securities.
- pursuant to a contract or arrangement with a customer, undertakes on behalf of the customer (whether on a discretionary authority granted by the customer or otherwise) the management on behalf of customers of a portfolio of securities for the purpose of investment.
- (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 its management staff in that business.
- (c) The type of customers with whom the applicant proposes to do business.
- (d) Describe in detail the organisational structure and internal control procedures which the applicant has adopted or proposes to adopt in the conduct of the business.
4. Name and address of auditors or proposed auditors:
5. Name and address of attorneys-at-law or proposed attorneys-at-law:
6. Name and address of bankers or proposed bankers:

7. If the company is a subsidiary of another company give the name, address, and nature of business of the parent company:

8. Give the name and address of subsidiaries, if any, of the company, or any enterprise in which it has a shareholding or similar interest, give details and nature of business pursued:

9. Set out the name and address of each person who directly or indirectly exercise 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>

10. Is a director 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 company;
- (b) places of incorporation; and
- (c) dates of appointment.

(For questions 6 and 7 answer “Yes” or “No” in the space provided. If “Yes” attach annexure giving all relevant particulars.)

11. Has any director of the applicant within the past ten years—

- (a) been licensed or registered in any place under any law which requires licensing or registration in relation to dealing in securities or acting as an 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 its or his right to carry on any trade, business or profession for which a specific licence, registration or other authority is required by law in any place?
-

12. Has any director of the applicant within the past ten 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 Montserrat 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 the applicant in any civil proceedings, in Montserrat or elsewhere? (If “Yes”, using an annexure, give full details, including whether judgement is unsatisfied.)
-

- (g) been declared bankrupt or compounded with or made an assignment for the benefit of the applicant’s creditors, in Montserrat or elsewhere?
-

- (h) been engaged in the management of any company other than a company referred to in answer to question 5?
-

- (i) been refused a fidelity or surety bond in Montserrat or elsewhere?
-

- (j) been disqualified as a director, or been a director of a company that has gone into receivership or liquidation, in Montserrat or elsewhere?
-

13. In relation to each director and staff management member of the applicant, set out below details of the officer's employment and business activities, during the previous ten years:

<i>Name of Director of staff member</i>	<i>Name and address of employer (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 dates)</i>

14. Set out any additional information (including any formal qualifications or training of the directors, or management staff of the applicant and the name of the institution that conducted the relevant course) considered relevant to this application:

15. Set out below details of two persons (who must not be related to the applicant, and neither of whom has any interest in the success or otherwise of this application) with whom each director and management staff member of the applicant has had regular contact over the past five years and of whom the Commission 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 or Management Staff Member in Respect of Whom Enquiries May be Made</i>

PART 2

MISCELLANEOUS

We declare that all information given in this application and in the attached annexure (if any) is complete and accurate to the best of our knowledge and belief.

Dated this _____ day of _____

*Signature

Signature

(Name of Director)

(Name of Director)

Dated this _____ day of _____

Signature

Justice of Peace/Attorney-at-Law

** This application is to be signed by two directors of the applicant.*

FORM 4

**APPLICATION FOR
PRINCIPAL OR REPRESENTATIVE LICENCE**

Application for a principal or representative* licence under the Act is made as follows:

1. (a) Applicant's surname	Other names
(b) Residential address	Telephone No.
(c) Date of birth	Place of birth
(d) No. of years applicant has resided in Montserrat	Nationality
(e) Occupation for which licence is sought:	
(f) Full name of employer:	
(g) The full address at which the business of the employer is to be carried on:	Telephone No.
(h) Nature of business of the principal/representative	
(i) Address of place at which Register under section 86 of the Act will be kept	
(j) Present remuneration arrangement with employer: salary, commission or both	
(k) Directorship in companies in Montserrat or elsewhere	

**Delete whichever is inapplicable.*

2. (Answer “Yes” or “No” in the space provided. If “Yes” attach annexure giving all relevant particulars.) Has the applicant within the past ten years
- (a) been licensed or registered in any place under any law which requires licensing or registration to deal or trade in securities or act as principal or representative? _____
 - (b) been licenced, 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 applicant’s right to carry on any trade, business or profession for which a specific licence, 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 Montserrat 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 the applicant in any civil proceedings, in Montserrat or elsewhere? (If “Yes”, attach annexure giving full details, including whether judgement is unsatisfied) _____

(j) been refused a fidelity or surety bond, in Montserrat or elsewhere?

(k) been declared a bankrupt or compounded with or made an assignment for the benefit of the applicant's creditors in Montserrat 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 Montserrat or elsewhere?

3. Has the applicant had any experience in performing the functions of a principal or representative? (Answer "Yes" or "No") If "Yes" attach annexure giving all relevant particulars.

4. Set out below details of the applicant's employment and business activities during the previous ten years:

<i>Name and Address of Employer (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 dates)</i>

5. Set out below details of two persons (who must not be related to the applicant, and neither of whom has any interest in the success or otherwise of this application) with whom the applicant has had regular contact over the past five years and of whom the Commission may enquire regarding the applicant's character and reputation:

<i>Name</i>	<i>Address</i>	<i>Occupation</i>

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 5% of the aggregate of the nominal amount of all issued shares of the company? (Answer "Yes" or "No". If "Yes", give full details of the interest including the 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) is complete and accurate to the best of my knowledge and belief.

Dated this _____ day of _____

Signature _____
(Signed by Applicant)

Dated this _____ day of _____

Signature _____
Justice of the Peace/Attorney-at-Law

NOTE:

(a) This application should be accompanied by a certificate in or to the effect of the following form:

To the Commission:

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 the applicant 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 _____

Signature _____

Name _____

Capacity _____

- (b) The certificate should be signed by each licensee by whom the applicant is to be employed or for or by arrangement with whom the applicant is to act.

FORM 5

REGISTER OF SECURITIES

Name of person having an interest:

<i>Particulars*</i>	<i>Acquired</i>	<i>Disposed of</i>	<i>Balance</i>

<i>Date</i>	<i>Name of Security</i>	<i>Unit Price</i>	<i>No. of Units</i>	<i>Cost</i>	<i>No. of Units</i>	<i>Proceeds</i>	<i>In Units</i>

- * State how securities were acquired or disposed of and if acquired or disposed of on a securities exchange, give agent's name.

FORM 6

NOTICE OF PLACE AT WHICH REGISTER IS TO BE KEPT

1. Name: _____
2. Capacity in which section 86 of the Act applies: _____
3. Residential address and telephone number of applicant: _____
4. Business address and telephone number: _____
5. Name of employer (if any): _____
6. Place at which record is to be kept: _____
7. Date of commencement of keeping register: _____

Dated this _____ day of _____

Signature _____

Name _____

Capacity _____

FORM 7

**NOTICE OF CHANGE OF PLACE OF BUSINESS
AND CHANGE OF PLACE AT WHICH REGISTER IS KEPT**

1. Name of licensee:

2. Type of licence held and licence number:

3.
 - (a) Former address of place of business:
 - (b) New address of place of business:
 - (c) Date of change of place of business:

4.
 - (a) Former address of place at which register was kept:
 - (b) New address of place at which register is kept:
 - (c) Date of change of address of place at which register is kept:

Dated this _____ day of _____

Signature _____

Name _____

Capacity _____

FORM 8

NOTIFICATION OF CESSATION OF BUSINESS

1. Name of licensee: _____
2. Type of licence held and licence number: _____
3. Notice is given that on the _____ day of _____, business ceased to be carried on in Montserrat by the above-mentioned licensee in respect of which he was licensed to carry on business.

Dated this _____ day of _____

Signature _____

Name _____

Capacity _____

FORM 9

**NOTICE OF CHANGE OF REPRESENTATIVE'S EMPLOYER
AND NOTICE OF CHANGE OF PLACE AT WHICH REGISTER IS KEPT**

1. Name of licensee: _____
2. Type of licence held and licence number: _____
3. Residential Address: _____

4. Notice is given that on the _____ day of _____ the licensee will cease to be a representative of _____ and that from the _____ day of _____ the licensee will be a representative of _____ whose principal place of business is at _____.
5. (a) Former address of place at which register was kept:

(b) New address of place at which register is kept:

(c) Date of change of address of place at which register is kept:

Dated this _____ day of _____

Signature _____

Name _____

THIRD SCHEDULE

FEEs

TYPES OF FEES		AMOUNT (in EC\$)	EXPLANATION
1.	<i>Application Fee</i>		A one-time fee paid upon submission of application forms and accompanying documentation. The fee is non-refundable and allows for the costs of due diligence procedures undertaken by the Commission to thoroughly review the application.
(a)	Broker-dealer	1,000	
(b)	Custodian	1,000	
(c)	Investment advisor (company)	1,000	
(d)	Investment advisor (individual)	1,000	
(e)	Limited service broker	750	
(f)	Management Company	1,000	
(g)	Principal	200	
(h)	Representative	200	
2.	<i>Licence Fee</i>		
(a)	Broker-dealer	3,000	
(b)	Custodian	4,000	
(c)	Investment advisor (company)	3,000	
(d)	Investment advisor (individual)	4,000	
(e)	Limited service broker	2,000	
(f)	Management Company	4,000	
(g)	Principal	500	
(h)	Representative	500	
3.	<i>Annual Renewal Licence Fees</i>		
(a)	Broker-dealer	2,000	
(b)	Custodian	3,000	
(c)	Investment advisor (company)	2,000	
(d)	Investment advisor (individual)	2,500	
(e)	Limited service broker	1,500	
(f)	Management Company	3,000	
(g)	Principal	500	
(h)	Representative	500	
4.	<i>Replacement of Licence Fee</i>	1,500	

TYPES OF FEES		AMOUNT (in EC\$)	EXPLANATION
5.	<i>Examination Fee</i>		Fee per person
(a)	Investment adviser examination fee	1,500	
(b)	Principal – compliance workshop/ examination fee	2,000	
(c)	Representative examination fee	1,500	
6.	<i>Advertisement Filing Fee</i> Fee for filing of advertisements	50	Fee per person
7.	<i>Authorisation of Collective Investment Scheme Fee</i>		A one-time fee paid upon submission of application forms and accompanying documentation.
(a)	Authorisation of Collective Investment Scheme Application Fee	1,000	
(b)	Authorisation of Collective Investment Scheme Fee	4,000	The fee is non- refundable and allows for the costs of due diligence procedures undertaken by the Commission to thoroughly review the application.
(c)	Annual Renewal Authorisation of Collective Investment Scheme Fee	3,000	
8.	<i>Securities Exchange Licence Fee</i>		A one-time fee paid upon submission of application forms and accompanying documentation.
(a)	Securities Exchange Licence Application Fee	1,000	
(b)	Securities Exchange Licence Fee	5,000	The fee is non- refundable and allows for the costs of due diligence procedures undertaken by the Commission to thoroughly review the application.
(c)	Annual Renewal Securities Exchange Licence Fee	4,000	

TYPES OF FEES			AMOUNT (in EC\$)	EXPLANATION
9.	<i>Clearing Agency Licence Fee</i>			
	(a)	Clearing Agency Licence Application Fee	1,000	A one-time fee paid upon submission of application forms and accompanying documentation. The fee is non-refundable and allows for the costs of due diligence procedures undertaken by the Commission to thoroughly review the application.
	(b)	Clearing Agency Licence Fee	5,000	
	(c)	Annual Renewal Clearing Agency Licence Fee	4,000	
10.	<i>Registration of Corporate Issuers Fee</i>			
	(a)	Registration of existing public company.	1,000	Minimum of \$5,000. If 1/36 th is greater than \$5,000, the greater amount will apply.
	(b)	Registration of company proposing to issue securities to the public.	1/36 of 1% of offering amount to be raised	
11.	<i>Self-Regulatory Organisation Fee</i>			
	(a)	Licence Application Fees		A one-time fee paid upon submission of application forms and accompanying documentation. The fee is non-refundable and allows for the costs of due diligence procedures undertaken by the Commission to thoroughly review the application.
		(i)	Broker-dealer association	
		(ii)	Depositories	
		(iii)	Exchanges	
		(iv)	Independent Share Registrars	
		(v)	Investment funds association	
	(b)	Licence Fee		

[Subsidiary]

		(i)	Broker-dealer association	2,500	
		(ii)	Depositories	5,000	
		(iii)	Exchanges	5,000	
		(iv)	Independent Share Registrars	5,000	
		(v)	Investment funds association	2,500	
	(c)	Annual Renewal Licence Fee			
		(i)	Broker-dealer association	2,000	
		(ii)	Depositories	4,000	
		(iii)	Exchanges	4,000	
		(iv)	Independent Share Registrars	4,000	
		(v)	Investment funds association	2,000	
12.	<i>Proposed Rule Change Fee</i>			1,000	Fee per submission

SECURITIES (CONDUCT OF BUSINESS) REGULATIONS

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

REGULATION

1. Short title
2. Interpretation
3. Contravention

PART 2

CODE OF BUSINESS CONDUCT

4. Independence
5. Material interest
6. Inducement
7. Fair and clear communication
8. Customers' understanding of risk
9. Information about the licensee
10. Representatives of licensees
11. Where customer agreement required
12. Customer's rights
13. Suitability
14. Charges
15. Confirmation and periodic information
16. Customer order priority
16. Timely execution
18. Best execution
19. Timely allocation
20. Fair allocation
21. Front running
22. Excessive transactions
23. Insider dealing
24. Safeguarding of customer investments
25. Complaints
26. Compliance
27. Supervision
28. Customer confidentiality
29. Cold calling
30. Cessation of business

PART 3

CUSTOMER MONEY

31. Application
32. Customer money
33. Customer bank accounts
34. Accounting for and use of customer money
35. Payment out of customer bank account

PART 4

AUDITORS

36. Engagement letters
37. Powers and duties of auditors
38. Notification to Commission
39. Resignation or removal of auditors

SECURITIES (CONDUCT OF BUSINESS) REGULATIONS - SECTION 72

(S.R.O.s 24/2002 and 44/2003)

Commencement

[28 February 2002]

PART 1

PRELIMINARY

Citation

1. (1) These Regulations may be cited as the Securities (Conduct of Business) Regulations.

(2) These Regulations are of general application to all licensed securities business provided that, where a regulation applies only in particular circumstances, that regulation will apply to a licensee only if those circumstances are relevant to the type of the securities business undertaken by that licensee.

Interpretation

2. In these Regulations—

“**approved bank**” means a bank licensed under the Banking Act and which is approved by the Commission for the purposes of these Regulations;

“**customer bank account**” means a bank account established for the purposes of regulation 33; and

“**money**” includes any form of money, whether represented by a cheque or other payable order, or otherwise.

Contravention

3. If a licensee contravenes any provision of these Regulations the licensee commits a disciplinary offence.

PART 2

CONDUCT OF BUSINESS

Independence

4. If a licensee is advising or acting for a customer the licensee shall—

(a) not claim it is independent or impartial if it is not; and

(b) ensure that any claim it makes as to its independence or impartiality adequately includes any limitation that there may be on either.

Material interest

5. If a licensee 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 the transaction, the licensee shall not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless the licensee has—

- (a) fairly 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 affect the interests of the customer.

Inducement

6. A licensee must take reasonable steps to ensure that neither it nor any of its employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to its customers.

Fair and clear communication

7. (1) A licensee may make a communication with another person that is designed to promote the provision of securities investment business services only if it can show that it believes on reasonable grounds that the communication is fair, comprehensive and not misleading.

(2) A licensee shall take reasonable steps to ensure that any agreement, written communication, notification or information that it gives or sends to customers to whom it provides securities investment business services is presented fairly and clearly.

Customers' understanding of risk

8. A licensee shall not—

- (a) recommend a transaction to a customer, or effect a discretionary transaction with or for the customer, unless it has taken all reasonable steps to enable the customer to understand the risks involved;
- (b) mislead a customer as to any advantages or disadvantages of a contemplated transaction; or
- (c) promise a return unless the return is contractually guaranteed.

Information about the licensee

9. A licensee must take reasonable steps to ensure that a customer to whom it provides securities investment business services is given adequate information about its identity and business address and the identity and status within the licensee's firm of employees and other relevant representatives with whom the customer has contact.

Representatives of licensee

10. (1) A licensee shall satisfy itself on reasonable grounds and on a continuing basis that it has appointed a representative who is a fit and proper person to act for it in that capacity.

(2) A licensee shall satisfy itself on reasonable grounds and on a continuing basis that it has adequate resources to monitor and enforce compliance by its representatives with high standards of business conduct.

Where customer agreement required

11. (1) A licensee shall not provide to a customer any securities investment business services relating to—

- (a) the discretionary management of a portfolio; or
- (b) any other type of business that may be specified by the Commission, except under a written agreement signed by the customer and returned to the licensee.

(2) The agreement shall set out in adequate detail the basis on which those services are provided.

(3) The Commission may from time to time prescribe special procedures relating to the operation of discretionary accounts and every licensee shall follow the special procedures or ensure that they are followed.

(4) A court of competent jurisdiction may, if it considers it just and equitable to do so, by order set aside or vary an agreement entered into in contravention of this regulation, but the order shall not affect any dealing or transaction entered into or carried out by the licensee on behalf of the customer.

Customers' rights

12. (1) A licensee shall not, in any written communication or agreement, seek to exclude or restrict—

- (a) any duty or liability to a customer which it has under any law or under any rules made by the Commission;
- (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 investment business 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 it in the provision of securities investment business services.

(2) A purported exclusion or restriction prohibited by this regulation shall be void and of no effect.

Suitability

13. (1) A licensee must take all reasonable steps to ensure that it does not give securities investment business advice to, nor effect a discretionary 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 licensee is or ought reasonably to be aware.

(2) A licensee must not recommend a security to a customer unless the licensee has adequate current information in its possession to enable it to form a basis for the recommendation.

Charges

14. (1) A licensee's charges must not be unfair in their incidence or unreasonable in their amount having regard to all relevant circumstances.

(2) A licensee must before it provides securities investment business services to a customer disclose to the customer—

- (a) the basis or amount of its charges for the provisions of those services, and
- (b) the nature and amount of any other remuneration receivable by it and attributable to the customer.

(3) A licensee must not have a commission, mark-up or markdown in excess of 5% and any commission, mark-up or markdown in excess of 5%, shall be treated as excessive except as otherwise determined by the Commission.

Confirmation and periodic information

15. (1) When a licensee causes a sale or purchase of securities with or for a customer, it must ensure that within 24 hours the customer is sent a contract note containing the essential details of the transaction.

(2) If a licensee acts as an investment manager for a customer, it must ensure that the customer is sent at suitable intervals—

- (a) a report stating the value of the portfolio or account at the beginning and the end of the period;
- (b) its composition at the end of the period; and
- (c) in the case of a discretionary portfolio or account, changes in its composition between the beginning and the end of the period.

(3) A customer transaction report must be submitted to the Commission in respect of any transaction involving a sum in excess of \$10,000.

Customer order priority

16. A licensee shall deal with its customer and own account orders fairly and in due turn.

Timely execution

17. A licensee shall effect or arrange the execution of an order as soon as is reasonably practicable after it has agreed or decided in its discretion to effect or arrange a customer order.

Best execution

18. A licensee must take all reasonable steps to find and deal on the terms which are the best available to the customer when dealing with or for a customer.

Timely allocation

19. A licensee must ensure that a transaction it executes is promptly allocated.

Fair allocation

20. If a licensee aggregates 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—

- (a) it shall not give unfair preference to itself or to any of those for whom it dealt; and
- (b) where all orders cannot be satisfied, it shall give priority to satisfying orders for customer transactions.

Front running

21. If a licensee intends to publish to customers a price-sensitive recommendation or research or analysis, it must not knowingly effect an own account transaction in the investment concerned or in any related investment 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.

Excessive transactions

22. A licensee shall not—

- (a) deal or arrange a deal in the exercise of discretion for any customer; or
- (b) advise a customer to deal,

if the dealing could in the circumstances reasonably be regarded as too frequent or excessive.

Insider dealing

23. A licensee shall not knowingly profit or seek to profit, either for its own account, the account of a customer or any third party, from inside information in the hands of any of its officers, employees or agents, or assist anyone with such information to make a profit for itself.

Safeguarding of customer investments

24. A licensee who has custody of a customer's securities in connection with or with a view to securities investment business shall—

- (a) keep safe, or arrange for the safekeeping of, any documents evidencing title, relating to them; and

- (b) ensure that any securities that it buys or holds for a customer are properly registered in the customer's name or, with the consent of the customer, in the name of an appropriate nominee.

Complaints

25. (1) A licensee must have internal procedures to ensure the proper handling of complaints from customers and to ensure that any appropriate remedial action on those complaints is promptly taken.

(2) A licensee shall maintain a customer complaints file that contains copies of all customer complaints.

Compliance

26. (1) A licensee must disclose, in every transaction, whether it is dealing with a customer in its capacity as an agent or on its own account.

(2) licensee and its customers shall have a fiduciary relationship and the licensee must treat and conduct its business in full observance of this obligation.

(3) A licensee must take reasonable steps, including the establishment and maintenance of procedures, to ensure that—

- (a) its officers, employees and other representatives are aware of their obligations under the Act and its regulations, and that they act in conformity with them; and
- (b) sufficient information is recorded and retained about its securities business in compliance with the Act and its regulations.

(4) A licensee must keep and maintain all necessary books and records of its business including—

- (a) customer account statements;
- (b) records of transactions;
- (c) order tickets;
- (d) confirmations; and
- (e) stock ledgers,

for a period of not less than seven years, for inspection by any person duly authorised by the Commission.

Supervision

27. A licensee must establish and maintain procedures—

- (a) for the supervision of each of its officers, employees and other representatives; and
- (b) for ensuring that the persons referred to in (a) do not give advice or provide services of a nature that is beyond their competence to give or to provide.

Customer confidentiality

28. (1) Subject to subregulation (2), all information in the possession of a licensee relating to a customer must be kept confidential by it.

(2) A licensee may disclose information relating to a customer when properly required to do so by the Commission, a clearing house or the market supervision department of a securities market of which it is a member, or if it is ordered to do so by a court of competent jurisdiction.

Cold calling

29. (1) No licensee 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 Montserrat for the purpose of trading in a security.

(2) Subregulation (1) does not apply where the licensee attends at or telephones the residence—

- (a)* of a close personal friend, a business associate or a client with whom or on whose behalf the licensee has been in the habit of trading securities; or
- (b)* of a person who has received a copy of a prospectus or draft prospectus and is requesting that information regarding a security offered in that prospectus be given to the person by the licensee.

Cessation of business

30. If a licensee withdraws from securities business it shall—

- (a)* immediately notify the Commission and each of its customers of its decision; and
- (b)* ensure to the satisfaction of the Commission that any outstanding business is properly completed or transferred to another licensee.

PART 3

CUSTOMER MONEY

Application

31. This Part applies to any customer money held or received by a licensee in the course of carrying on its securities business.

Customer money

32. (1) For the purposes of these Regulations “**customer money**” is money of any currency which, in the course of carrying on its securities business, a licensee holds or receives on behalf of a customer or which it owes to a customer.

(2) Customer money shall be held by the licensee 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.

(3) Customer money shall not form part of the assets of the licensee for any purpose and shall not be available in any circumstances for payment of any debt of the licensee.

Customer bank accounts

33. (1) A licensee that receives or holds customer money shall open one or more customer bank accounts with an approved bank.

(2) A customer bank account must be kept segregated from any account holding money belonging to the licensee.

(3) A licensee must immediately pay into a customer bank account all customer money coming into its hands for or from a customer.

(4) A licensee must keep records of—

- (a) all amounts paid into a customer bank account kept by the licensee, specifying the persons on whose behalf the amounts are held and the dates on which they were paid into the account;
- (b) all withdrawals from a customer bank account, the dates of those withdrawals, and the names of the persons on whose behalf the withdrawals are made; and
- (c) any other particulars that may be determined by the Commission.

Accounting for and use of customer money

34. A licensee must account properly and promptly for customer money and, in particular, must ensure that—

- (a) customer money and other money do not become mixed;
- (b) the licensee can at all times be sure how much customer money stands to the credit of each customer; and
- (c) money belonging to one customer is not used for another customer.

Payment out of a customer bank account

35. (1) Subject to subregulation (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 customer's own name.

(2) A licensee may withdraw money from a customer bank account for or towards payment of its own fees or commission only if the fees or commission accord with the arrangements agreed with the customer.

PART 4
AUDITORS

Engagement letters

36. A licensee shall ensure that the auditor appointed under section 81 of the Act has the powers and duties specified in regulation 37 and that—

- (a) those powers and duties are set out in an engagement letter;
- (b) the engagement letter is signed by the licensee and the auditor; and
- (c) the licensee retains a copy of the engagement letter.

Powers and duties of auditors

37. (1) An auditor shall have—

- (a) a right of access at all times to the accounting and other records of the licensee and all other documents relating to its business; and
- (b) a right to require from the licensee any information and explanation deemed necessary for the performance of the duties of an auditor.

(2) An auditor shall submit a report to the Commission on the annual financial statements in accordance with these Regulations and the report shall state the matters specified in regulation 18 of the Securities (Accounting and Financial Statements) Regulations.

(3) In preparing an auditor's report for the purposes of these Regulations, the auditor shall carry out the necessary investigations to enable the auditor to form an opinion as to the matters required by regulation 18 of the Securities (Accounting and Financial Statements) Regulations to be stated in the report.

Notification to Commission

38. A licensee must, within seven days, give written notice to the Commission of the appointment, removal or resignation of an auditor.

Resignation or removal of auditors

39. (1) If an auditor resigns or is removed by a licensee, the notice required by the Commission under regulation 38 shall contain either—

- (a) a statement signed by the auditor to the effect that there are no circumstances connected with the resignation or removal which the auditor considers should be brought to the attention of the Commission; or
- (b) a statement signed by the auditor stating the circumstances mentioned in paragraph (a).

(2) For the purposes of these Regulations, a failure to appoint an auditor at the end of the auditors term of office shall be deemed to be removal of that auditor.

**SECURITIES (CONTINUING DISCLOSURE OBLIGATIONS
OF ISSUERS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

REGULATION

1. Short title
2. Interpretation

PART 2

DISCLOSURE OBLIGATIONS

3. General obligation
4. Delivery of accounts
5. Information to accompany directors' report
6. Interim reports
7. Acquisition or disposal of assets
8. Transactions with related companies where the issuer is a subsidiary
9. Prescribed information to shareholders
10. Board meetings
11. Board decisions
12. Securities exchange and Commission to be notified of certain decisions
13. Basis of allotment
14. Winding-up and liquidation
15. Commission may require information

PART 3

SANCTIONS

16. Action against an issuer
17. Action against a director
18. Notification of sanction

**SECURITIES (CONTINUING DISCLOSURE OBLIGATIONS
OF ISSUERS) REGULATIONS - SECTION 175**

(S.R.O. 25/2002)

Commencement

[28 February 2002]

PART 1

PRELIMINARY

Short title

1. (1) These Regulations may be cited as the Securities (Continuing Disclosure Obligations of Issuers) Regulations.

(2) These Regulations apply to issuers of securities which are shares, warrants or corporate debt securities and which are publicly offered or publicly traded.

(3) For the purpose of these Regulations, securities are “publicly offered” if the issuer has issued the securities pursuant to a prospectus approved by the Commission under the Act.

(4) For the purpose of these Regulations, securities are “publicly traded”, irrespective of when issued, if—

- (a) the securities are listed or otherwise admitted to dealing on a securities exchange; or
- (b) the Commission so determines, and notifies the issuer in writing to this effect, having regard to the frequency or volume of trading in the issuer’s securities wherever and however the trading takes place.

Interpretation

2. In these Regulations—

“**associate**”, in relation to any director or chief executive, means—

- (a) the spouse;
- (b) any son, daughter, step son or step daughter under the age of eighteen years of the director or chief executive, or of the spouse of such director or chief executive;
- (c) 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;

“**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;

“**director**” includes any person who occupies the position of a director, by whatever name called;

“**financial year**” means the period in respect of which any profit and loss account of an issuer laid before its members in a general meeting is made up, whether that period is a year or not;

“**principal activity**”, in relation to an issuer and its subsidiaries, means an activity which in the financial year contributes more than 10% of—

- (a) the aggregate turnover; or
- (b) the aggregate results of all activities that—
 - (i) showed profits; or
 - (ii) showed losses;

“**prospectus**” means a prospectus or draft prospectus approved by the Commission under the Act;

“**securities exchange**” means a securities exchange licensed by the Commission under the Act;

“**substantial shareholder**”, in relation to an issuer, means a person entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of the issuer; and

“**transaction**” includes two or more related transactions.

PART 2

DISCLOSURE OBLIGATIONS

General obligation

3. (1) Generally and apart from compliance with all the specific requirements of these Regulations, an issuer shall notify—

- (a) the securities exchange on which its securities are listed or otherwise admitted to dealing;
- (b) the Commission;
- (c) its members; and
- (d) other holders of its securities,

without delay of any material information that has not been previously disclosed by the issuer and which information—

- (i) is necessary to enable them and the public to appraise the financial position of the issuer and its subsidiaries;
- (ii) is necessary to avoid the establishment of a false market in its securities; or
- (iii) would be likely to bring about a material change in the price of its securities.

(2) Subregulation (1) shall not apply—

- (a) with regard to information about impending developments or matters in the course of negotiation, provided that if the issuer has reason to believe that a leak has occurred or is likely to occur and, in either case, the development or matter in question is such that knowledge of it would be likely to lead to a substantial movement in the price of its securities, the issuer must without delay notify the securities exchange and at least give a warning announcement to the effect that the issuer expects shortly to release information which may lead to such a movement;
- (b) if the securities exchange is satisfied by the issuer that disclosure to the public of information under subregulation (1) might prejudice the issuer's legitimate interests and the securities exchange grants a dispensation from the requirement of subregulation (1).

Delivery of accounts

4. The issuer shall send to—

- (a) the securities exchange;
- (b) the Commission;
- (c) every member of the issuer; and
- (d) every holder of securities (not being bearer securities) issued by the issuer,

a copy of the issuer's annual accounts, auditor's report and director's 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 three months after the end of that financial year.

Information to accompany directors' report

5. The issuer shall include in or with the annual directors' report—

- (a) a description of the principal activities of the issuer and its subsidiaries and, where two or more activities are so described, a statement giving in respect of each 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 Montserrat;
- (c) an audited consolidated financial statement;
- (d) a statement showing—
 - (i) the name of every subsidiary, its principal country of operation, its country of incorporation and its main business; and
 - (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;

- (e) 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 the 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;
- (f) 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;
- (g) 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;
- (h) a statement by the directors as to the reasons for any significant departure from applicable standard accounting practices in Montserrat;
- (i) 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;
- (j) in respect of the financial year, a statement of the amount of interest capitalised by the issuer and its subsidiaries during the year;
- (k) a statement as to the period unexpired 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;

- (l) 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;
- (m) 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;
- (n) 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;
- (o) a summary, in the form of a comparative table, of the results and of the assets and liabilities of the issuer and its subsidiaries, for the last five financial years, with any necessary explanations or adjustments for changes in capital to make the figures fully comparable one year with another; and
- (p) any other material information.

Interim reports

6. (1) The issuer shall prepare in respect of the first three months of each financial year of the issuer, unless that financial year is of six months or less, an interim report containing the information required by subregulation (2) and, not later than thirty days after the end of that period of three months, the issuer shall—

- (a) publish in a newspaper, having a national circulation an announcement containing the information required by subregulation (2) to be contained in the interim report, the day after approval by or on behalf of the board;
- (b) supply the Commission immediately on publication with the names of the relevant newspaper 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 subregulation (1) shall contain at least the following information stated in respect of the issuer and its subsidiaries—

- (a) turnover;
- (b) profit (or loss) before taxation and extraordinary items with separate disclosure of any items included which are exceptional because of size or incidence;
- (c) taxation on profits and the basis of computation;
- (d) profit attributable to minority interests;
- (e) profit attributable to shareholders before extraordinary items;
- (f) extraordinary items (net of taxation);

- (g) profit attributable to shareholders;
- (h) 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);
- (i) transfers to and from reserves;
- (j) earnings per share calculated on the basis of profits before extraordinary items;
- (k) comparative figures of the matters specified in paragraph (a) to (j) inclusive for the corresponding previous period; and
- (l) 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) If the accounting information given in an interim report has not been audited that fact must be stated and if the issuer's auditor has audited the accounting information contained in an interim report, that 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 subregulation (2).

Acquisition or disposal of assets

7. (1) In the case of—

- (a) an 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 15% 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 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 the 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 15% of the issuer's consolidated pre-tax profit disclosed in the last audited accounts,

the issuer shall comply with the disclosure requirements of subregulation (2).

(2) Where subregulation (1) applies, the issuer shall notify the securities exchange, the Commission 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) 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 subregulation (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 over or under the book value;
- (e) in the case of a transaction referred to in subregulation (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

8. Where a transaction specified in subregulation (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 subregulation (3).

(2) For the purpose of this regulation, “**transaction**” means—

- (a) an arrangement or agreement where the issuer directly or indirectly grants a loan or gives other financial assistance;
- (b) an arrangement or agreement where the issuer provides security, whether by guarantee or otherwise, for the discharge of an obligation; or
- (c) a transaction other than in the ordinary course of business.

(3) Where subregulation (1) applies, the issuer shall notify the securities exchange, the Commission 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; and
- (b) the general nature of the transaction and, where the transaction involves the making of a loan, the giving of financial assistance or the giving of any security, its amount or value.

Prescribed information to shareholders

9. An issuer shall ensure that all the necessary facilities and information are available to enable holders of its listed securities to exercise their rights and, in particular shall—

- (a) publish, in a newspaper having a national circulation, notice of every general meeting;
- (b) inform holders of securities of the holding 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.

Board meetings

10. The date fixed for a board meeting 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.

Board decisions

11. The issuer shall inform the securities exchange and the Commission immediately after approval by or on behalf of the board of—

- (a) a decision to declare, recommend or pay any dividend or to make any other distribution on its securities, and the rate and amount of the dividend or other distribution;
- (b) a decision not to declare, recommend or pay any 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 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.

Securities exchange and Commission to be notified of certain decisions

12. The issuer shall inform the securities exchange and the Commission immediately of any decisions made in regard to—

- (a) an alteration to the issuer's constitution;
- (b) a proposed change in its capital structure including the structure of its listed debt securities;
- (c) a change in the rights attaching to any class of securities and a change in the rights attaching to any shares into which debt securities are convertible or exchangeable;
- (d) any tender offers;
- (e) a change in its directorate, auditor or chief executive; and
- (f) bankruptcy or receivership.

Basis of allotment

13. The issuer shall inform the securities exchange and the Commission 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 next business day after the allotment letters or other relevant documents of title are posted.

Winding-up and liquidation

14. (1) The issuer shall inform the securities exchange and the Commission on the happening of any of the following events as soon as it comes to the attention of the issuer—

- (a) 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;
- (b) 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;
- (c) the entry into possession of or the sale by any mortgagee of a portion of the issuer's assets which in aggregate value represents an amount in excess of 15% of the consolidated net tangible assets of the group; or
- (d) the making of any judgement, declaration or order by a court or tribunal of competent jurisdiction whether on appeal or at first instance, which may adversely affect the issuer's enjoyment of a portion of its assets

which in aggregate value represents an amount in excess of 15% of the consolidated net tangible assets of the group.

(2) For the purposes of subregulation (1) a “**major subsidiary**” means a subsidiary representing 15% or more of the consolidated net tangible assets or pre-tax trading profits of the group.

Commission may require information

15. (1) The Commission may, at any time, require an issuer—

- (a) to provide to it information in the form and within the time limit required by the Commission; and
- (b) to publish that information in the form and within the time the Commission 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 Commission may itself publish the information and may treat the non-compliance in any manner it deems fit.

PART 3

SANCTIONS

Action against an issuer

16. (1) If the Commission considers that an issuer has contravened any of these Regulations, the Commission may do one or more of the following—

- (a) fine the issuer a sum not exceeding \$100,000;
- (b) censure the issuer;
- (c) publish the fact that the issuer has been fined or censured for contravening these Regulations;
- (d) suspend trading in or discontinue the admission to dealing of the issuer’s securities.

(2) In the event of an issuer being fined under subregulation (1)(a), the issuer must disclose details of the fine in its audited accounts relating to the period in which the fine is imposed.

(3) The Commission may, at any time, require an issuer—

- (a) to provide to it information in the form and within the time limit required by the Commission; and
- (b) to publish that information in the form and within the time the Commission considers appropriate for the purpose of protecting investors or maintaining a fair and orderly market in its securities.

(4) If an issuer fails to comply with a requirement to publish information, the Commission may itself publish the information.

Action against a director

17. If the Commission 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 Commission may, in addition to any action it may take against an issuer under regulation 16, do one or more of the following—

- (a) fine the relevant directors a sum not exceeding \$50,000;
- (b) censure the relevant directors;
- (c) publish the fact that these directors have been fined or censured;
- (d) in the case of wilful or persistent failure by a director to discharge his responsibilities, state publicly that in its opinion the retention of office by the director is prejudicial to the interests of investors;
- (e) if the director remains in office following a public censure by the Commission under paragraph (d), suspend trading in or discontinue the admission to dealing of the issuer's securities.

Notification of sanction

18. If the Commission proposes to take any of the steps described in regulation 16 or 17, unless the Commission considers that maintenance of an orderly market or the protection of investors otherwise requires, the Commission shall, in relation to the party concerned—

- (a) give advance notice of the Commission's proposed action;
 - (b) invite the making of representations to the Commission 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 (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

REGULATION

1. Short title
2. Interpretation

PART 2

ESTABLISHMENT OF COLLECTIVE INVESTMENT SCHEMES

3. Unit trusts
4. Investment companies

PART 3

AUTHORISATION OF COLLECTIVE INVESTMENT SCHEMES

5. Application for authorisation
6. Conditions for authorisation
7. Authorisation by Commission
8. Representations against refusal or revocation
9. Property of collective investment scheme to be held by custodian
10. Changes of management company or custodian
11. Avoidance of exclusion clauses
12. Directions by Commission
13. Investigations

PART 4

CUSTODIAN

14. Appointment of custodian
15. Eligibility to be custodian
16. Custody of property
17. General duties of custodian
18. Instructions from management company
19. Change of address
20. Liability of custodian
21. Register of participants
22. Notification of contraventions

PART 5

MANAGEMENT COMPANIES

23. Appointment of management company
24. Eligibility to be a management company
25. Qualifications of directors
26. General duties of management company
27. Restrictions on activities of management company
28. Change of address
29. Liability of management company
30. Requests to management company and investment adviser
31. Units held by management company

PART 6

AUDIT OF COLLECTIVE INVESTMENT SCHEMES

32. Appointment and qualifications of auditor
33. Audit of accounts
34. Communication with Commission

PART 7

COLLECTIVE INVESTMENT SCHEME
PARTICULARS AND FINANCIAL REPORTS

35. Documents to be prepared and published by management companies
36. Contents of collective investment scheme particulars
37. Contents of annual and half-yearly reports
38. Publication of collective investment scheme particulars and reports

PART 8

GENERAL REQUIREMENTS

39. Publication of prices
40. Units and accumulation units
41. Payments out of and into the property of a collective investment scheme
42. Creation, etc. of units, repurchases and redemptions
43. Valuation and pricing
44. Advertising
45. Fees of custodian
46. Inclusion of performance data
47. Changes to collective investment scheme documentation
48. Transactions with connected persons
49. Meetings

PART 9

**RESTRICTIONS ON INVESTMENT POWERS
OF COLLECTIVE INVESTMENT SCHEMES**

50. Application of this Part
 51. General investment powers
 52. Core requirement
 53. Spread of investments
 54. Government and other public securities
 55. Financial futures
 56. Warrants and options
 57. Investment in other collective investment schemes
 58. Prohibition of real estate investments
 59. Restriction on lending of money
 60. Restriction on lending of property other than money
 61. Unlimited liability
 62. Limitations on securities in which directors or officers have interests
 63. Limitations on nil-paid or partly paid securities
 64. Limitations on borrowing
 65. Prohibition of short selling
 66. Applicability of restrictions to umbrella collective investment schemes
 67. Breach of investment limits
 68. Name of collective investment scheme
- SCHEDULE 1: Contents of Unit Trust Rules
- SCHEDULE 2: Contents of Articles of Association of Investment Company
- SCHEDULE 3: Information to be contained in Application for
Authorisation
- SCHEDULE 4: Information to be disclosed in Collective Investment
Scheme Particulars
- SCHEDULE 5: Contents of Financial Accounts
- SCHEDULE 6: Annual and Half-Yearly Reports

SECURITIES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS - SECTION 109

(S.R.O.s 26/2002 and 36/2003)

Commencement

[28 February 2002]

PART 1

PRELIMINARY

Short title

1. These Regulations may be cited as the Securities (Collective Investment Schemes) Regulations.

Interpretation

2. In these Regulations—

“**appointed person**” means a person duly appointed by the Commission to act under its authority for the purposes of an investigation;

“**collective investment scheme particulars**” means that document issued to the public containing information on a collective investment scheme calculated to invite offers by the public to subscribe for or purchase units in the collective investment scheme;

“**custodian**” means any person to whom the property of the scheme is entrusted for safekeeping;

“**custodian agreement**” means any agreement relating to the appointment and functions of the custodian to which the collective investment scheme and the custodian are parties;

“**formation documents**” means in the case of a unit trust, the trust deed, and in the case of an investment company, its articles of incorporation, together with the management contract and the custodian agreement;

“**investment adviser**”, in relation to a collective investment scheme, means a person who is engaged by the management or investment company under a commercial arrangement not being a mere contract of employment to supply the company with advice as to the merit of investment opportunities or information relevant to the making of judgments about the merits of investment opportunities;

“**management company**”, in relation to a collective investment scheme, means the management company appointed by the management contract;

“**management contract**” means any agreement relating to the appointment and functions of a management company to which the collective investment scheme and the management company are parties;

“**participants**” means the persons who participate in a collective investment scheme, and includes members of an investment company;

“**collective investment scheme**” or “**scheme**” means collective investment scheme as defined in the Act.

PART 2

ESTABLISHMENT OF COLLECTIVE INVESTMENT SCHEMES

Unit trusts

3. A collective investment scheme that is a unit trust shall be established by its scheme rules and shall provide for the matters specified in Schedule 1.

Investment companies

4. A collective investment scheme that is an investment company shall be established by its memorandum and articles of incorporation and shall provide for the matters specified in Schedule 2.

PART 3

AUTHORISATION OF COLLECTIVE INVESTMENT SCHEMES

Application for authorisation

5. (1) An application to the Commission for the authorisation of a collective investment scheme shall be made jointly by the management or proposed management company and the custodian or proposed custodian of the scheme.

(2) An application must contain the information specified in Schedule 3.

(3) An application must be accompanied by the following—

- (a) the collective investment scheme’s formation documents;
- (b) the collective investment scheme particulars;
- (c) the management company’s latest audited report;
- (d) the custodian’s latest audited report; and
- (e) the application fee specified in Schedule 3 to the Securities (Licences and Fees) Regulations.

(4) The Commission may require the applicant to furnish additional information.

Conditions for authorisation

6. (1) Subject to the provisions of these Regulations, the Commission may only authorise a unit trust under regulation 7 if it satisfies each of the following conditions—

- (a) it is established under the laws of Montserrat;
- (b) it has both a management company and a custodian;

- (c) the management company is incorporated or registered in Montserrat;
- (d) the custodian is incorporated or registered in Montserrat;
- (e) the management company and the custodian are different persons who are independent of each other;
- (f) the management company and the custodian are each licensed by the Commission to act respectively as such in relation to collective investment schemes;
- (g) the formation documents and collective investment scheme particulars comply with the relevant provisions of these Regulations and are in a form acceptable to the Commission;
- (h) the name is approved by the Commission;
- (i) the participants are entitled to have their units redeemed in accordance with the formation documents at a price related to the net value of the property to which the units relate and determined in accordance with the formation documents; and
- (j) the management company has appointed an auditor who has the approval of the custodian and who complies with the requirements of regulation 32.

(2) A unit trust shall be treated as complying with subregulation (1)(i) if it requires the management company to ensure that a participant is able to sell his units on a licensed securities market at a price not significantly different from that mentioned in subregulation (1)(i).

(3) Subject to the provisions of these Regulations, the Commission may only authorise an investment company under regulation 7 if it satisfies each of the following conditions—

- (a) it is incorporated under the laws of Montserrat;
- (b) it has a minimum paid-up capital of EC\$1,500,000;
- (c) the directors of the company are of good repute and satisfy the Commission that they possess the necessary experience and expertise for the performance of their duties;
- (d) it has both a management company and a custodian;
- (e) the management company is incorporated or registered in Montserrat;
- (f) the custodian of the collective investment scheme is incorporated or registered in Montserrat;
- (g) the management company and the custodian are different persons who are independent of each other;
- (h) the management company and the custodian are licensed by the Commission to act as such in relation to collective investment schemes;

- (i) its formation documents and collective investment scheme particulars comply with the relevant provisions of these Regulations and are in a form acceptable to the Commission;
- (j) the name of the company is acceptable to the Commission; and
- (k) it has appointed an auditor who has the approval of the custodian and who complies with the requirements of regulation 32.

Authorisation by Commission

7. (1) The Commission may, on an application made in accordance with regulation 5, authorise a collective investment scheme for the purposes of these Regulations if—

- (a) the conditions of regulation 6 are satisfied; and
- (b) the Commission has received the fee specified in the Securities (Licences and Fees) Regulations.

(2) An authorisation under subregulation (1) may be granted subject to the terms and conditions the Commission considers necessary or desirable for the protection of participants.

(3) The Commission shall inform the applicant of its decision on the application not later than three months after the date on which the application was received or, if within that period the Commission has required the applicant to furnish further information in connection with the application, from the date on which that information is furnished.

(4) If the Commission does not notify the applicant of its decision within the time required by subregulation (3), it shall be taken to have refused the application.

Representations against refusal or revocation

8. (1) Before the Commission—

- (a) refuses an application for authorisation; or
- (b) revokes an authorisation,

it shall give the applicant written notice of its intention to do so, stating its reasons and the rights of the applicant under subregulation (2).

(2) A person on whom a notice is served under subregulation (1) may, within twenty one days of its receipt, make written representation to the Commission.

(3) The Commission shall have regard to any representation made in accordance with subregulation (2) in determining whether to refuse the application or revoke the authorisation.

Property of collective investment scheme to be held by custodian

9. The custodian shall hold the property of a collective investment scheme on behalf of the participants.

Changes of management company or custodian

10. (1) The management company shall give written notice to the Commission of any proposal to replace the custodian of the collective investment scheme.

(2) The custodian of a collective investment scheme shall give written notice to the Commission of any proposal to replace the management company of the collective investment scheme.

(3) Effect shall not be given to any such proposal unless—

- (a)* the Commission has given its approval to the proposal; or
- (b)* one month has elapsed since the date on which notice was given under subregulation (1) or (2) without the Commission having notified the management company or the custodian that the proposal is not approved.

(4) Neither the management company nor the custodian shall be replaced except by persons who satisfy the requirements of these Regulations.

Avoidance of exclusion clauses

11. If a provision in the formation documents of a collective investment scheme has the effect of exempting the management company or custodian from liability for any failure to exercise due care and diligence in the discharge of their functions in respect of the collective investment scheme it shall be null and void.

Directions by Commission

12. (1) If it appears to the Commission that—

- (a)* any requirement for the authorisation of a collective investment scheme is no longer satisfied;
- (b)* the exercise of the power conferred by this regulation is desirable in the interests of participants or potential participants in the collective investment scheme; or
- (c)* the management company or custodian of the collective investment scheme has contravened any provision of these Regulations or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under these Regulations,

the Commission may give a direction under subregulation (2).

(2) A direction under this regulation may—

- (a)* require the management company of the collective investment scheme to cease the issue or redemption, or both the issue and redemption, of units under the collective investment scheme on a date specified in the direction until a further date as specified in that or another direction;

- (b) require the management company and custodian of the collective investment scheme to wind it up by a date specified in the direction or, if no date is specified, as soon as is practicable.

(3) A management company or custodian which fails to comply with a direction under subregulation (2) commits an offence and is liable on conviction to a fine of \$100,000.

Investigations

13. (1) The Commission may investigate the affairs of any collective investment scheme, the management company or custodian if it appears to the Commission that it is in the interests of the participants to do so or that the matter is of public concern.

(2) For the purposes of an investigation under subregulation (1) the Commission, or an appointed person, may require the collective investment scheme, management company or custodian—

- (a) to afford the Commission or appointed person access to its books, accounts and documents;
- (b) to produce its books, accounts and documents and give any information and afford the use of any facilities that may be required for the investigation; and
- (c) to attend before the Commission at a specified time and place, and to answer questions or otherwise furnish information appearing to the Commission to be relevant to the investigation.

(3) A person who fails, without reasonable excuse, to comply with the requirements of the Commission or an appointed person under subregulation (2) commits an offence and is liable on conviction to a fine of \$50,000.

PART 4

CUSTODIAN

Appointment of custodian

14. Every collective investment scheme for which authorisation is requested shall appoint a custodian that has been licensed by the Commission to act as a custodian of collective investment schemes.

Eligibility to be a custodian

15. (1) A custodian shall be a body corporate which is—

- (a) a bank licensed under the Banking Act;
- (b) a trust company which is a subsidiary of such a bank; or
- (c) a company other than a company referred to under paragraph (b) that has a minimum issued and paid up capital of \$250,000 and the Commission is satisfied that the company has sufficient financial

resources and experience necessary to enable it effectively to conduct its business and to carry out its obligations as a custodian.

- (2) A custodian shall be independently audited.

Custody of property

16. (1) The custodian of a collective investment scheme shall take into its custody for safe keeping the property of the collective investment scheme by means of an agreement between the custodian and the management company in which the custodian accepts custodianship of the collective investment scheme property and agrees to observe the provisions of the formation documents and the custodian agreement.

(2) The custodian shall hold and deal with the property in accordance with the provisions of these Regulations and the formation documents of the collective investment scheme.

General duties of custodian

17. (1) The custodian shall act solely in the interests of the participants in the performance of its duties.

(2) The custodian shall take reasonable care to ensure that the collective investment scheme is managed by the management company in accordance with these Regulations and the formation documents of the collective investment scheme, and shall ensure that—

- (a) the property of the collective investment scheme is invested and its income is applied, in accordance with these Regulations and the formation documents;
 - (b) the value of the units is calculated by the management company or investment company, as the case may be;
 - (c) the sale, issue, repurchase, redemption and cancellation of units are carried out.
- (3) The custodian shall ensure that the methods adopted by the management company in calculating the value of units are adequate to ensure that the sale, issue, repurchase, redemption and cancellation prices are calculated in accordance with these Regulations and of the formation documents.

(4) The custodian shall—

- (a) carry out the instructions of the management company in respect of investments unless they are in conflict with the provisions of the collective investment scheme particulars or formation documents;
- (b) take reasonable care to ensure that any investment and borrowing limitations set out in these Regulations and the formation documents, and the conditions under which the collective investment scheme was authorised, are complied with;
- (c) issue a report to the participants to be included in the annual report on whether in the custodian's opinion the management company has in all material respects managed the collective investment scheme in

accordance with these Regulations and of the formation documents; if the management company has not done so, the respects in which it has not done so and the steps which the custodian has taken in respect thereof;

- (d) take reasonable care to ensure that unit certificates are not issued until subscription monies have been paid;
- (e) ensure that any registrable investments which are held for participants in the collective investment scheme are properly registered in the names of the participants or, with the consent of the participants, in the name of an eligible nominee; and
- (f) where title to investments is recorded electronically, ensure that entitlements are separately identified from those of the management company of the collective investment scheme in the records of the person maintaining records of entitlement.

Instructions from management company

18. The custodian shall carry out the instructions of the management company unless it has reasonable cause to believe that to do so would contravene regulation 17.

Change of address

19. A custodian shall notify the Commission in writing of any intended change of address of its registered office or permanent place of business in Montserrat.

Liability of custodian

20. The custodian shall be liable to the management company and to the participants for any loss suffered by them as a result of—

- (a) any unjustifiable failure by it to perform its obligations; or
- (b) the improper performance by it of its obligations.

Register of participants

21. (1) The custodian shall establish and maintain a register of the participants of the collective investment scheme in a form determined by the Commission.

(2) The custodian may, with the prior approval of the Commission, appoint some other person to establish and maintain the register on its behalf.

(3) The register may be formed, in whole or in part, of records maintained by a securities depository approved by the Commission.

(4) The register shall be conclusive evidence as to the persons entitled to the units respectively standing in their name.

Notification of contraventions

22. The custodian shall notify the Commission in writing forthwith after becoming aware of the matter, of any failure, act or omission of the management company constituting a breach or contravention of any of the provisions of these Regulations or

of the formation documents of the collective investment scheme and of the steps taken by it to ensure that the breach or contravention is rectified as soon as is reasonably practicable.

PART 5

MANAGEMENT COMPANIES

Appointment of management company

23. (1) Subject to subregulation (2) every collective investment scheme for which authorisation is requested shall appoint a management company that has been licensed by the Commission to act as a management company of collective investment schemes.

(2) In the case of an investment company the Commission may in its discretion permit it to be managed by its own board of directors, in these Regulations referred to as a self-managed scheme, who are to perform the functions of a management company.

(3) Where the Commission permits an investment company to be a self-managed scheme under subregulation (2), references in these Regulations to a management company or the directors of a management company shall be deemed to be references to the directors of the self-managed scheme.

(4) The directors of a self-managed scheme are prohibited from dealing with the scheme as principals.

(5) In addition to compliance with regulation 51, the articles of association of a self-managed scheme shall contain the following provisions—

- (a)* that participants may convene a meeting and, by way of an ordinary resolution, remove any director considered no longer fit and proper to manage the property of the scheme; and
- (b)* that the directors' fees and remuneration shall be fixed by the participants at a general meeting.

Eligibility to be a management company

24. (1) A management company shall be a body corporate which—

- (a)* is engaged solely in the business of collective investment scheme management;
- (b)* has sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; and
- (c)* shall maintain at all times a net asset position.

(2) A management company shall have a minimum paid-up capital of \$250,000.

Qualifications of directors

25. (1) The directors of the management company must be of good repute and in the opinion of the Commission possess the necessary experience for the performance of their duties.

(2) In determining the acceptability of the management company, the Commission may also consider the qualifications and experience of persons employed by the management company.

General duties of management company

26. The management company shall in the performance of its duties act solely in the interests of participants and take reasonable care to protect those interests, and in particular shall—

- (a) manage the property of the collective investment scheme in accordance with—
 - (i) the provisions of these Regulations;
 - (ii) the formation documents;
 - (iii) the most recently published collective investment scheme particulars;
 - (iv) in the case of an investment company where the formation documents provide that the directors of the company may give directions, any directions from time to time so given by the directors of the company which are consistent with the provisions of subparagraphs (i), (ii) and (iii);
- (b) take all reasonable steps and exercise all due diligence to avoid the property of the collective investment scheme being invested in contravention of these Regulations;
- (c) have prepared in the prescribed form the accounts required by regulation 37 and shall arrange for such accounts to be audited in accordance with regulation 33;
- (d) ensure that the formation documents are made available for inspection by the public in Montserrat free of charge at all times during normal office hours, and make copies of such documents available upon the payment of a reasonable fee.

Restrictions on activities of management company

27. The management company of a collective investment scheme shall not engage in any activity other than the management of collective investment schemes.

Change of address

28. A management company shall notify the Commission in writing of any intended change of address of its registered office or permanent place of business in Montserrat.

Liability of management company

29. The management company shall be liable to the participants for any loss suffered by them as a result of—

- (a) any unjustifiable failure by it to perform its obligations; or

- (b) the improper performance by it of its obligations.

Requests to management company and investment adviser

30. The management company and any investment adviser appointed by the management company shall—

- (a) at the request of the custodian forthwith supply the custodian with such information concerning the administration of the collective investment scheme as it may reasonably require; and
- (b) comply with any directions given by the custodian for the purpose of satisfying regulation 17.

Units held by management company

31. (1) The management company shall keep a daily record of units held by it, distinguishing between different types of unit and showing all acquisitions and disposals by the management company and the balance thereof.

(2) The management company shall make the daily record available for inspection by the custodian during normal office hours and likewise supply to the custodian a copy of the record or any part of it on request.

PART 6

AUDIT OF COLLECTIVE INVESTMENT SCHEMES

Appointment and qualifications of auditor

32. (1) The auditor of a collective investment scheme shall—

- (a) have a place of business in Montserrat;
- (b) be an accountant;
- (c) not be a director or controller of the custodian, or the management company of the collective investment scheme or, in the case of an investment company, a director or controller of the company, or a partner, employee or shareholder of such a person; and
- (d) be approved by the Commission.

(2) An auditor shall cease to hold appointment as auditor of a collective investment scheme if the auditor ceases to fulfill any of the requirements of sub-regulation (1), or if the Commission withdraws its approval or if the management company with the approval of the custodian, revokes the appointment.

(3) In the event that the management company revokes the appointment of the auditor the company shall forthwith notify the Commission of the revocation and of the reasons for it.

(4) In the event of a vacancy the management company shall as soon as practicable make a new appointment of an auditor who has the approval of the custodian.

Audit of accounts

33. The auditor shall audit the accounts required to be included in the annual report by regulation 37 and shall—

- (a) carry out the duties of an auditor generally in accordance with international auditing standards; and
- (b) in his report state whether or not in his opinion the accounts give a true and fair view of the financial position of the collective investment scheme as at the end of the accounting period to which they relate.

Communication with Commission

34. No duty to which an auditor of a collective investment scheme is subject shall be regarded as contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request from the Commission, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of the collective investment scheme and which is relevant to any function of the Commission under these Regulations.

PART 7

COLLECTIVE INVESTMENT SCHEME PARTICULARS AND FINANCIAL REPORTS

Documents to be prepared and published by management companies

35. (1) The management company of a collective investment scheme shall prepare and publish in accordance with the provisions of this Part the following documents relating to that collective investment scheme—

- (a) the collective investment scheme particulars;
- (b) an annual report for each financial year; and
- (c) a half-yearly report covering the first six months of each financial year.

(2) The annual and half-yearly reports shall be published not later than four months and two months respectively from the end of the accounting period to which they relate.

Contents of collective investment scheme particulars

36. (1) For the purposes of this Part, the formation documents of a collective investment scheme shall form an integral part of the collective investment scheme particulars and shall, except as provided for by subregulation (3) be annexed thereto.

(2) The collective investment scheme particulars shall include—

- (a) particulars of the matters specified in Schedule 4, in so far as that information does not appear in the formation documents; and
- (b) any further information that may be necessary to enable participants to make an informed judgement as to the investment proposed.

(3) Notwithstanding subregulation (1), the formation documents need not be annexed to the collective investment scheme particulars if participants and potential participants are informed by the collective investment scheme particulars—

- (a) that the formation documents will be sent to them free of charge on request; or
- (b) of the place in Montserrat where the documents are available for inspection free of charge.

(4) The collective investment scheme particulars shall be revised at least once in every twelve months but, if any significant change occurs in the matters stated therein or any significant new matter arises which ought to be stated therein before the collective investment scheme particulars are due for such an annual revision, they shall be revised immediately that change occurs or new matter arises so far as is necessary to take account of that change or matter.

Contents of annual and half-yearly reports

37. (1) The annual report of a collective investment scheme shall include—

- (a) a statement of assets and liabilities;
- (b) an income and distribution account;
- (c) a capital account;
- (d) a copy of the report of the auditor of the collective investment scheme on the above-mentioned accounts including any qualifications made by the auditor;
- (e) a report by the management company to the participants on the activities of the collective investment scheme during the financial year; and
- (f) a copy of the report by the custodian to the participants as to the manner in which the collective investment scheme has been managed during the financial year.

(2) The financial accounts referred to in subregulations (1)(a), (b) and (c) shall comply with the requirements of Schedule 5.

(3) The reports referred to in subregulations (1)(d), (e) and (f) shall comply with the requirements of Schedule 6.

(4) The auditor and the custodian shall deliver their reports to the management company or investment company in good time to enable them to include them in the annual report.

(5) A half-yearly report shall include the matters specified in Parts A and B of Schedule 6.

Publication of collective investment scheme particulars and reports

38. (1) The management company of a collective investment scheme shall send to the Commission a copy of the collective investment scheme particulars (including any revision) and of every annual and half-yearly report of the collective investment scheme.

(2) The management company shall supply to the Commission, on request, all information relevant to the collective investment scheme's reports and accounts.

(3) Any advertisement or other information promoting a collective investment scheme in Montserrat shall indicate that collective investment scheme particulars exist and the places where those particulars may be obtained by members of the public.

(4) The management company shall not effect a sale of units in the collective investment scheme to any person unless it has offered to that person free of charge a copy of—

- (a) the collective investment scheme particulars;
- (b) the most recent annual report (if any); and
- (c) any subsequent half-yearly report.

(5) The management company shall make copies of—

- (a) the collective investment scheme particulars;
- (b) the formation documents (if not annexed to the collective investment scheme particulars); and
- (c) the annual and half-yearly reports,

available for inspection by any member of the public free of charge during ordinary office hours at its principal place of business in Montserrat and at any other place specified in the collective investment scheme particulars.

(6) The management company shall, at the request of any participant in the collective investment scheme, supply to that person free of charge a copy of the most recent collective investment scheme particulars, annual report and any subsequent half-yearly report.

PART 8

GENERAL REQUIREMENTS

Publication of prices

39. The management company shall—

- (a) in a manner approved by the Commission, publish the issue, sale, repurchase and redemption prices of units in the collective investment scheme on each day that it holds itself out as willing to issue, sell, repurchase or redeem the units; and
- (b) in any event, publish the prices at least twice a month unless the Commission authorises a reduction of the frequency to once a month if such a reduction will not prejudice the interests of participants.

Units and accumulation units

40. (1) The interests of participants in a collective investment scheme shall consist of units and each unit shall be treated as representing one undivided share in the capital property of the collective investment scheme.

(2) Where accumulation units are in existence, any accumulation units issued otherwise than in pursuance of the initial offer shall, when issued, each represent the same number (including fractions) of undivided shares in the capital property of the collective investment scheme as each other accumulation unit then in existence.

Payments out of and into the property of a collective investment scheme

41. (1) The following expenses only may be paid out of the property of a collective investment scheme—

- (a) the costs of dealing in the property of the collective investment scheme;
- (b) interest on borrowings permitted under the collective investment scheme and charges incurred in effecting or varying the terms of such borrowings;
- (c) the costs and expenses incurred in obtaining a listing of the units of the collective investment scheme on any licensed securities exchange;
- (d) taxation and duties payable in respect of the property of the collective investment scheme, the formation documents of the collective investment scheme and the creation and sale of units;
- (e) any costs incurred in modifying the formation documents of the collective investment scheme;
- (f) any costs incurred in the preparation and publication of the collective investment scheme particulars and of any amended or supplementary particulars;
- (g) any costs incurred in respect of meetings of the participants;
- (h) any periodic charge payable to the management company;
- (i) the fees of the custodian;
- (j) any expenses or disbursements of the custodian which are authorised by the formation documents of the collective investment scheme to be paid out of the property of the collective investment scheme;
- (k) the fees and expenses of the auditor;
- (l) the costs incurred in respect of the distribution of income to participants;
- (m) the costs incurred in respect of the printing and posting of certificates;
- (n) the costs incurred in keeping the register;
- (o) costs reasonably incurred in respect of the publication of prices of units and in respect of the publication and distribution of the collective investment scheme particulars, annual and interim reports and accounts;
- (p) the costs incurred in the establishment of the collective investment scheme as stated in the collective investment scheme particulars, amortised over the period, not exceeding five years, specified in those particulars;

- (q) the costs incurred by the management company and permitted by the formation documents; and
- (r) any fees payable to the Commission.

(2) All payments or repayments of an income nature properly payable out of or into the property of a collective investment scheme shall be paid out of or into the income property of the collective investment scheme.

(3) All payments or repayments of a capital nature properly payable out of or into the property of a collective investment scheme shall be payable out of or into the capital property of the collective investment scheme.

(4) All payments of an income nature properly payable out of the property of a collective investment scheme shall, to the extent that the income property of the collective investment scheme is insufficient to meet them when they fall due for payment, be paid out of the capital property of the collective investment scheme.

Creation, etc. of units, repurchases and redemptions

42. (1) The formation documents of a collective investment scheme shall provide for the creation, cancellation, sale, repurchase and redemption of units, the valuation of the property of the collective investment scheme and the calculation of the sale, issue, repurchase and redemption prices of units.

(2) Subject to this regulation, a participant in a collective investment scheme shall be entitled to have his units repurchased or redeemed in accordance with the terms of the formation documents of the collective investment scheme at a price related to the net value of the property to which the units relate and determined in accordance with those terms.

(3) A collective investment scheme shall be treated as complying with subregulation (2) if the formation documents require the management or investment company to ensure that a participant is able to sell his units on a licensed securities market at a price not significantly different from that mentioned in subregulation (2).

(4) The management company—

- (a) may, with the prior agreement of the custodian of the collective investment scheme; or
- (b) shall, if the custodian of the collective investment scheme so requires,

suspend the repurchase or redemption of units at any time for a period not exceeding thirty days, if it or the custodian is of the opinion that there is good and sufficient reason to so suspend the repurchase or redemption of units having regard to the interests of the participants.

(5) The management company shall forthwith give notice in writing of any suspension under subregulation (4), stating the reasons for the suspension, to the Commission.

(6) The Commission may by notice in writing to the management company require it to suspend the repurchase or redemption of units for a period specified in the notice, if the Commission is satisfied that the suspension is necessary in the interests of the participants or in the public interest.

Valuation and pricing

43. (1) Offer and redemption prices should be calculated on the basis of the net asset value of the collective investment scheme divided by the number of units outstanding.

(2) Such prices may be adjusted by fees and charges for management of the collective investment scheme, which shall first be charged against investment income, next against dealing profits from the issue and redemption of units in the collective investment scheme, and lastly against the capital value of the investments of the collective investment scheme.

(3) The amount or method of calculating such fees and charges shall be clearly disclosed in the collective investment scheme particulars.

Advertising

44. (1) A collective investment scheme shall not issue, use or cause to be issued or used for any purpose any advertisement for or in connection with the collective investment scheme unless a copy of the advertisement is forwarded to the Commission, together with the fee set out in Schedule 3 to the Securities (Licences and Fees) Regulations, fourteen days prior to the date of first use.

(2) If on receipt the Commission is not satisfied with the advertisement, it shall before the date of first use require the collective investment scheme to amend, withdraw or refrain from issuing or using an advertisement as in its discretion it may determine.

(3) For the purposes of subregulations (1) and (2), “advertisement” does not include any publication of the issue, sale, repurchase or redemption prices of units.

(4) An advertisement of a collective investment scheme shall include a warning statement that—

- (a) the price of units, and the income from them (if the collective investment scheme pays a dividend), may decrease or increase; and
- (b) in certain circumstances a participant’s right to redeem his units may be suspended.

(5) Warning statements shall be printed in type of the same size as the rest of the text in the advertisement; notwithstanding this, they may be in smaller text if printed in bold type or prominently outlined.

Fees of custodian

45. The fees of the custodian paid out of the property of a collective investment scheme shall be calculated and accrue and be paid in the manner determined by the formation documents of the collective investment scheme.

Inclusion of performance data

46. If performance data or estimated yield is quoted in any collective investment scheme particulars, advertisement or any other invitation to the public to invest, the Commission may require justification of the calculation.

(2) No forecast of the collective investment scheme's performance may be made but for this purpose the publication of a prospective yield does not constitute a forecast of performance.

Changes to collective investment scheme documentation

47. (1) Subject to subregulation (2), no alteration may be made to the formation documents of a collective investment scheme except by a special or extraordinary resolution of a participant and subject to the prior approval of the Commission.

(2) The formation documents may be altered by the management company and custodian, without consulting participants, provided that the custodian certifies in writing that in its opinion the proposed alteration—

- (a) is necessary to enable compliance with fiscal or other statutory or official requirements;
- (b) is necessary to correct a manifest error;
- (c) does not materially prejudice participants' interests;
- (d) does not to any material extent release the custodian, management company or any other person from any liability to participants; or
- (e) does not increase the costs and charges payable from the collective investment scheme property.

Transactions with connected persons

48. (1) No person shall enter into underwriting or sub-underwriting contracts on behalf of a collective investment scheme—

- (a) without the prior consent of the custodian; and
- (b) unless the collective investment scheme provides in writing that all commissions and fees payable under such contracts and all investments acquired pursuant to such contracts form part of the collective investment scheme's assets.

(2) If cash forming part of the collective investment scheme's assets is deposited with the custodian, the management company, the investment adviser or with any connected person of these companies (being an institution authorised to accept deposits), interest must be paid on the deposit at a rate not lower than the prevailing commercial rate for a deposit of that size and term, negotiated at arm's length.

(3) All transactions carried out by or on behalf of the collective investment scheme must be at arm's length and, in particular, any transactions between the collective investment scheme and—

- (a) the management company;
- (b) the investment adviser;
- (c) the directors of the collective investment scheme; or

any of their connected persons as principal; may only be made with the prior consent of the custodian.

(4) No single dealer should account for 50% or more of the collective investment scheme's transactions in value in any one financial year of the collective investment scheme.

Meetings

49. A collective investment scheme shall arrange to conduct general meetings of participants as follows—

- (a) participants must be able to appoint proxies;
- (b) votes should be proportionate to the number of units held, or to the value of units held where there are accumulation units;
- (c) the quorum for meetings at which a special or extraordinary resolution is to be considered shall be the holders of 25 % of the units in issue, and 10% if only an ordinary resolution is to be considered;
- (d) if within half an hour from the time appointed for the meeting a quorum is not present, the meeting should stand adjourned for not less than fourteen days; the quorum at an adjourned meeting will be those persons present in person or by proxy;
- (e) if the possibility exists of a conflict of interest between different classes of participant there should be provision for class meetings;
- (f) an Extraordinary General Meeting shall be called for the following purposes—
 - (i) to modify, alter or add to the formation documents, except as provided in regulation 47;
 - (ii) to terminate the collective investment scheme (unless the means of termination of the collective investment scheme are stipulated in the formation documents, in which case termination shall be effected in accordance with the provisions of the formation documents);
 - (iii) to increase the maximum fees paid to the management company, custodian or directors of the collective investment scheme; or
 - (iv) to impose other types of fee;
- (g) the directors of the collective investment scheme, the custodian, the management company, investment adviser and their connected persons shall be prohibited from voting their beneficially owned shares at, or counted in the quorum for, a meeting at which they have a material interest in the business to be conducted;
- (h) an ordinary resolution may be passed by a simple majority of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting; and
- (i) a special or extraordinary resolution may only be passed by 75% or more of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting.

PART 9

RESTRICTIONS ON INVESTMENT
POWERS OF COLLECTIVE INVESTMENT SCHEMES**Application of this Part**

50. (1) This Part applies to all authorised collective investment schemes.

(2) For the purposes of this Part—

“near cash” means money, deposits or investments which fall within any of the following—

- (a)* money deposited with a licensed bank or financial institution which is in a current account, or in a deposit account provided that the money can be drawn immediately and without payment of a penalty exceeding seven days interest calculated at ordinary commercial rates;
- (b)* certificates of deposit issued by a licensed bank or financial institution if immediately redeemable at the option of the holder;
- (c)* Government and other public securities if redeemable at the option of the holder or bound to be redeemed within two years;

“net asset value” means the net value of the property of the securities collective investment scheme after deducting—

- (a)* any outstanding borrowing whether immediately due to be repaid or not;
- (b)* any capital sum outstanding on a mortgage of an immovable to secure money borrowed under regulation 64(2)(b);

“regulated market” means any stock exchange, over-the-counter market or other organised securities market that is regulated, operates regularly, is open to the international public and is recognised by the Commission;

“securities exchange” means a securities exchange licensed by the Commission.

General investment powers

51. (1) The property of a collective investment scheme may be invested only in accordance with this Part and within any relevant upper limit that is specified.

(2) The collective investment scheme particulars may restrict—

- (a)* the descriptions of asset in which the property of the collective investment scheme may be invested;
- (b)* the proportion of the capital property of the collective investment scheme to be invested in assets of any description;
- (c)* the description of transactions permitted;
- (d)* the borrowing powers of the collective investment scheme,

and any such restrictions shall be observed as if they were included in this Part.

Core requirement

- 52.** The investments of a collective investment scheme must consist solely of—
- (a) transferable securities admitted to official listing on a securities exchange;
 - (b) transferable securities admitted to listing or traded on or under the rules of a regulated market;
 - (c) recently issued securities provided that—
 - (i) the terms of issue include an undertaking that application will be made for admission to official listing on a securities exchange or to be admitted to listing or traded on a regulated market; and
 - (ii) such admission is secured within a year of issue.

Spread of investments

- 53.** Subject to regulation 54, a collective investment scheme—
- (a) may invest no more than 15% of its net asset value in the transferable securities issued by any single issuer;
 - (b) may acquire no more than 25% of a security issued by any single issuer.

Government and other public securities

54. Up to 30% of a collective investment scheme's net asset value may be invested in Government and other public securities of the same issue.

Financial futures

55. A collective investment scheme may not enter into any financial futures contracts and options except for hedging purposes.

Warrants and options

56. A collective investment scheme may invest no more than 10% of its net asset value in warrants and options, in respect of transferable securities.

Investment in other collective investment schemes

57. (1) A collective investment scheme may not acquire the units of any other collective investment scheme unless that other collective investment scheme is also authorised or approved by the Commission.

(2) If a collective investment scheme's objective is to invest primarily in investments restricted by this Part, such holding must not be in contravention of the relevant limitation.

(3) A collective investment scheme may invest in aggregate no more than 5% of its net asset value in the units of other authorised or approved collective investment schemes.

(4) A collective investment scheme may acquire no more than 10% of the units of any single authorised collective investment scheme.

(5) Notwithstanding subregulations (2), (3) and (4), a collective investment scheme may invest all of its assets in a single collective investment scheme and be authorised as a feeder collective investment scheme, provided that—

- (a) the underlying collective investment scheme is authorised by the Commission;
- (b) the collective investment scheme particulars must state that the collective investment scheme is a feeder collective investment scheme into the underlying collective investment scheme; and
- (c) the borrowing of the feeder collective investment scheme may not exceed 10 % of its net asset value and shall be restricted to facilitating redemptions or defraying operating expenses.

(6) No increase in the overall total of initial charges, the management company's annual fee or any other costs and charges borne by the participants or by the collective investment scheme may result, if the collective investment scheme in which a collective investment scheme invests is managed by the same management company or by a connected person of that company.

Prohibition of real estate investments

58. A collective investment scheme may not invest in any type of real estate (including buildings) or interests in real estate (including options or rights but excluding shares in real estate companies).

Restriction on lending of money

59. (1) None of the money in the property of any collective investment scheme may be lent.

(2) Purchasing a debenture is not lending for the purposes of subregulation (1), nor is the placing of money on deposit or in a current account.

Restriction on lending of property other than money

60. (1) None of the property of a collective investment scheme other than money may be lent by way of deposit or otherwise.

(2) Stock-lending transactions are not lending for the purposes of subregulation (1).

(3) None of the property of the collective investment scheme may be mortgaged, except to secure money borrowed under regulation 64(2)(b).

Unlimited liability

61. A collective investment scheme may not acquire an asset that involves the assumption of a liability that is unlimited.

Limitations on securities in which directors or officers have interests

62. A collective investment scheme may not invest in any security of any class in any company or body if any director or officer of the management company owns more than one-half per cent of the total nominal amount of all issued securities of that class, or, collectively the directors and officers of the management company own more than 5% of those securities.

Limitations on nil-paid or partly paid securities

63. The portfolio of a collective investment scheme may not include any security where a call is to be made for any sum unpaid on that security unless that call could be met in full out of cash or near cash by the collective investment scheme's portfolio.

Limitations on borrowing

64. Subject to subregulation (2), a collective investment scheme may not borrow.

(2) A collective investment scheme may borrow—

- (a) up to a maximum of 10 % of its net asset value provided that the borrowing is temporary; and
- (b) in the case of an investment company, up to a maximum of 10% of its net assets if the borrowing is to enable the acquisition of immovable property essential for the direct pursuit of its business (and, together with any borrowing under paragraph (a), subject to the aggregate borrowing not exceeding in any case 15% of the net assets of the investment company).

Prohibition of short selling

65. A collective investment scheme may not carry out uncovered sales of transferable securities.

Applicability of restrictions to umbrella collective investment schemes

66. (1) Subject to subregulation (2), this Part shall not apply to an umbrella collective investment scheme as if it were a single collective investment scheme, but shall apply to each sub-collective investment scheme of the umbrella collective investment scheme as if each separate part were a single collective investment scheme.

(2) The total collective investment by the sub-collective investment scheme in any class of security issued by any one issuer shall not exceed 10 % of the net asset value of all the sub-collective investment schemes taken as a whole.

Breach of investment limits

67. If the investment limits in this Part are breached, the management company shall as a priority objective, within a reasonable period take all steps as are necessary to remedy the situation, taking due account of the interests of the participants.

Name of collective investment scheme

68. If the name of the collective investment scheme indicates a particular objective, geographic region or market, the collective investment scheme shall invest at least 70% of its non-cash assets in securities to reflect the particular objective or geographic region or market the collective investment scheme represents.

FIRST SCHEDULE

(Regulation 3)

CONTENTS OF UNIT TRUST RULES

Name of the unit trust

1. A statement of the name of the scheme being a name consistent with the objectives of the scheme stated in accordance with clause 2.

Investment objectives

2. If an objective of the scheme is investment—

- (a) in a geographic area (including the whole world) a statement of that fact (specifying the area),
- (b) in any economic sector or in all economic sectors, a statement of that fact (specifying the sectors), and
- (c) of a particular nature, a statement of that fact (specifying the particular nature).

Governing law

3. A statement that the scheme is established under and governed by the laws of Montserrat.

Trust deed to be binding and authoritative

4. A statement that the trust deed is binding on each participant as if he had been a party to it and so to be bound by its provisions and authorises and requires the custodian and the management company to do the things required of them by the terms of the deed.

Declaration of trust

5. A declaration that—

- (a) the property of the scheme (other than sums standing to the credit of the distribution account) is held by the custodian for and on behalf of the participants *pari passu*, according to the number of units held by each participant or, in a case where income units and accumulation units are both in issue, according to the number of individual shares in the property of the scheme represented by the units held by each participant, and
- (b) the sums standing to the credit of the distribution account are held by the custodian for the purposes of distribution only.

Base currency

6. A statement of what currency is the base currency of the scheme.

Annual accounting period

7. State the dates in the calendar year on which the annual accounting begins and ends which must, in the case of an umbrella scheme, be the same for all the constituent schemes.

Annual income allocation date

8. State the date in the calendar year (not being later than two months after the date on which the immediately preceding annual accounting period ends) that is to be the annual income allocation date that must, in the case of an umbrella scheme, be the same for all the constituent schemes.

Certificates

9. A provision as to the form, content of, and the manner of, authenticating certificates evidencing title to a holding of units.

Participants liability to pay

10. A provision that a participant is not liable to make any further payment after he has paid the purchase price of his units and that no further liability can be imposed on him in respect of the units which he holds.

Duration of the scheme

11. If the scheme is to terminate after the expiration of a particular period, a statement to that effect.

Management company's periodic charge

12. (1) A statement authorising the management company to make a periodic charge payable out of the property of the scheme and specifying how it shall accrue and be paid, with a statement of the maximum of that charge expressed as an annual percentage of the value of the property of the scheme.

(2) Alternatively a statement authorising the management company to make a periodic charge payable out of the property of the scheme expressed as a specified annual percentage of the value of the property of the scheme lower than the maximum referred to in sub-clause (1) with authority to increase it to a larger percentage of that value (not greater than that maximum) but with effect only from the expiry of three months from the date on which the management company gives notice in writing to each participant entered on the register of its intention to do so.

Umbrella collective investment schemes: management company's charge on an exchange of units

13. A statement authorising the management company of an umbrella collective investment scheme to make a charge of a fixed amount on the exchange of units in one constituent part (other than the first exchange by a participant in any one annual accounting period) and specifying what the maximum of that amount may be.

Custodian's remuneration

14. A statement authorising the management company to make payments to the custodian by way of remuneration for its services, relieving the custodian from any obligation to account for those payments to the participants or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

Custodian's remuneration chargeable to the property of the scheme

15. A statement authorising any payments to the custodian, by way of remuneration for its services, to be paid (in whole or in part) out of the property of the scheme.

Custodian's disbursements

16. The descriptions of expenses or disbursements of the custodian, including the fees of the registrar (if any) or any expenses or disbursements incurred by the custodian in itself performing the functions of registrar, which are payable out of the property of the scheme.

Management company's preliminary charge

17. A statement of the maximum percentage of the creation price of a unit in the scheme that may be included in the sale price of that unit calculated by reference to this creation price as a preliminary charge receivable by the scheme management company.

Initial price

18. A statement of the initial price of units.

Period of the initial offer

19. A statement of the length of the period of the initial offer.

Investment in collective investment schemes managed by the management company or its associate

20. A statement as to whether or not the property of the scheme may include units in another collective investment scheme that is—

- (a) managed by the management company or by another company in the same group as the management company; or
- (b) managed by any person who is a controller of the management company or of which the management company is the controller.

Accumulation units

21. A statement as to whether under the scheme units may be accumulation units only or accumulation units as well as income units.

Interim income allocation date

22. A provision authorising or requiring interim allocations of income and either specifying what the interim accounting period or periods is or are to be and what the

interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the collective investment scheme management company.

Investment adviser

23. Where the management company may appoint an investment adviser, a statement authorising it to do so.

SECOND SCHEDULE

(Regulation 4)

CONTENTS OF ARTICLES OF ASSOCIATION OF INVESTMENT COMPANY

Governing law

1. A statement that the articles of incorporation are made under and governed by the laws of Montserrat.

Investment objectives

2. If an objective of the scheme is investment—
- (a) in a geographic area (including the whole world) a statement of that fact (specifying the area),
 - (b) in any economic sector or in all economic sectors, a statement of that fact (specifying the sectors), and
 - (c) of a particular nature, a statement of that fact (specifying the particular nature).

Base currency

3. A statement of what currency is the base currency of the scheme.

Annual accounting period

4. State the dates in the calendar year on which the annual accounting begins and ends which must, in the case of an umbrella collective investment scheme, be the same for all the constituent collective investment schemes.

Annual income allocation date

5. State the date in the calendar year (not being later than two months after the date on which the immediately preceding annual accounting period ends) that is to be annual income allocation date that must, in the case of an umbrella collective investment scheme, be the same for all the constituent collective investment schemes.

No partly paid shares

6. A provision that no partly paid units may be issued.

Management or investment company's periodic charge

7. (1) A statement authorising the company to make a periodic charge payable out of the property of the scheme and specifying how it should accrue and be paid with a statement of the maximum of that charge expressed as an annual percentage of the value of the property of the scheme.

(2) Alternatively a statement authorising the company to make a periodic charge payable out of the property of the scheme expressed as a specified annual percentage of the value of the property of the scheme lower than the maximum referred to in sub-paragraph (1) with authority to increase it to a larger percentage of that value (not greater than that maximum) but with effect only from the expiry of three months from the date on which the scheme management company gives notice in writing to each participant entered on the register of its intention to do so.

Custodian's remuneration

8. A statement authorising the management company to make payments to the custodian by way of remuneration for its services, relieving the custodian from any obligation to account for those payments to the participants or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

Custodian's remuneration chargeable to the property of the collective investment scheme

9. A statement authorising any payments to the custodian by way of remuneration for its services to be paid (in whole or in part) out of the property of the scheme.

Custodian's disbursements

10. The descriptions of any expenses or disbursements of the custodian, including the fees of the registrar (if any) or any expenses or disbursements incurred by the custodian in itself performing the functions of registrar, which are payable out of the property of the scheme.

Initial price

11. A statement of the initial price of units.

Accumulation units

12. A statement as to whether under the scheme units may be accumulation units only or accumulation units as well as income units.

Interim income allocation date

13. If interim allocations of income are to be authorised or required, a provision so stating and also either specifying what the interim accounting period or periods is or are to be and what the interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the scheme management company and directors.

Investment adviser

14. Where the management company may appoint an investment adviser, a statement authorising it to do so.

THIRD SCHEDULE

(Regulation 5)

**INFORMATION TO BE CONTAINED IN APPLICATION
FOR AUTHORISATION**

General details of the collective investment scheme

1. Name of the collective investment scheme.
2. Names of the sub-collective investment schemes (if any).
3. Structure of the collective investment scheme.
4. Applicable Act and the date and country of establishment/incorporation.
5. Quotation on any securities exchange and authorisation granted by other regulatory bodies.
6. Undertakings given to other regulatory bodies.
7. Launch: date and place.
8. Dealing: daily/weekly/other.
9. Valuation of assets: daily/weekly/other.
10. Pricing: forward/historic/other.
11. Investment plans to be offered in Montserrat.

*For each collective investment scheme or
sub-collective investment scheme*

12. (1) Fee structure—
 - (a) level of all charges payable by participant; and
 - (b) level/basis of calculation of all charges payable by the collective investment scheme.
- (2) For equity or bond collective investment schemes—
 - (a) investment objective and borrowing powers; and
 - (b) currency of denomination.
- (3) Minimum initial subscription and the minimum subsequent holding.

Details of the parties to the collective investment scheme

13. The management company (if applicable)—
 - (a) Name;

- (b) Registered/business address;
- (c) Name of the ultimate holding company;
- (d) Previously approved by the Commission to manage authorised collective investment schemes? If no, the resumes of the directors and the most recent audited financial report;
- (e) Person(s) for contact with the Commission.

14. In the case of an investment company, the resumes of the directors of the collective investment scheme and person(s) for contact.

15. The custodian—

- (a) Name;
- (b) Registered/business address;
- (c) Name of the ultimate holding company;
- (d) Previously approved by the Commission as custodian of authorised collective investment schemes? If no, names of the directors and the most recent audited financial report;
- (e) Person(s) for contact with the Commission.

16. The investment adviser (if any)—

- (a) Name;
- (b) Registered/business address;
- (c) Name of the ultimate holding company.

17. For the custodian, management company and investment adviser—

- (a) which, if any, of these companies are connected persons;
- (b) name anyone who holds appointments, as director or officer, with more than one of these companies.

18. The auditor—

- (a) Name;
- (b) Registered/business address;

19. The principal dealer (if any)—

- (a) Name;
- (b) Registered/business address;
- (c) The approximate percentage of the scheme's transactions in value of securities carried out by the principal broker within the latest financial year of the scheme;
- (d) Whether the custodian, the directors of the scheme, the management company or the investment adviser is a connected person of the principal broker.

20. Lawyers in Montserrat (if any)—
- (a) Name;
 - (b) Person(s) for contact with the Commission.

FOURTH SCHEDULE

(Regulation 36(2))

INFORMATION TO BE DISCLOSED IN COLLECTIVE INVESTMENT SCHEME PARTICULARS

(NOTE: THIS LIST IS NOT INTENDED TO BE EXHAUSTIVE. THE SCHEME IS OBLIGED TO DISCLOSE ALL INFORMATION THAT MAY BE NECESSARY FOR PARTICIPANTS TO MAKE AN INFORMED JUDGEMENT.)

Constitution of the collective investment scheme

1. Name, registered address and place and date of creation of the scheme, with an indication of its duration if limited.

Investment objectives and restrictions

2. Details of investment objectives and policy, including summary of the investment and borrowing restrictions.

If the nature of the investment policy so dictates, a warning that investment in the scheme is subject to abnormal risks, and a description of the risks involved.

Operators and principals

3. The names and registered addresses of the following parties (where applicable)—

- (a) the management company and its board of directors;
- (b) the custodian;
- (c) the investment adviser;
- (d) the auditors;
- (e) the registrar; and
- (f) the lawyers to the scheme.

Characteristics of units

- 4. Minimum investment (if any).
- 5. A description of the different types of units, including their currency of denomination.
- 6. Form of certification.
- 7. Frequency of valuation and dealing, including dealing days.

Application and redemption procedures

8. The name(s) of the daily newspaper(s) in which prices will be published.
9. Procedure for subscribing/redeeming units, and in the case of umbrella collective investment schemes, conversion of units.
10. The maximum interval between the request for redemption and the dispatch of the redemption proceeds.
11. A summary of the circumstances in which dealing in units may be deferred or suspended.
12. It must be stated that no money should be paid to any intermediary in Montserrat who is not duly licensed by the Commission.

Distribution policy

13. The distribution policy and the approximate dates on which dividends (if any) will be paid (if applicable).

Fees and charges

14. (1) The level of all fees and charges payable by a participant, including all charges levied on subscription and redemption, and conversion (in the case of umbrella collective investment schemes).
- (2) In addition the level of all fees and charges payable by the collective investment scheme, including management fees, custodian fees and start-up expenses.
15. Disclosure of entitlement to brokerage or other transaction benefits of any connected persons to the scheme.

Taxation

16. Details of Montserrat and principal taxes levied on the scheme's income and capital, including tax, if any, deducted on distribution to participants.

Reports and accounts

17. The date of the scheme's financial year.
18. Particulars of what reports will be sent to registered participants and when. If there are bearer units in issue, information must be given on where in Montserrat reports can be obtained.

Warnings

19. The following statement and warning must be prominently displayed in the scheme particulars—

- (a) "Important - if you are in any doubt about the contents of this offering document, you should consult your stockbroker, bank manager, lawyer, accountant or other financial adviser";

- (b) a warning that the price of units and the income from them (where income is distributed) may go down as well as up.

General information

20. A list of formation documents and an address in Montserrat where they can be inspected free of charge or purchased.

21. The date of publication of the scheme particulars.

22. A statement that the management company accepts responsibility for the information contained in the scheme particulars as being accurate as at the date of publication.

Termination of collective investment scheme

23. A summary of the circumstances (of any) in which the scheme can be terminated.

FIFTH SCHEDULE

(Regulation 37(2))

CONTENTS OF FINANCIAL ACCOUNTS

General

1. The financial accounts must contain all the information required in this Schedule; interim reports must at least contain the Statement of Assets and Liabilities and the Investment Portfolio.
2. Where the scheme has paid or proposes to pay an interim dividend, the amount of dividend should be disclosed.
3. All accounts must contain comparative figures for the previous period except for the Investment Portfolio.
4. The items listed under the Statement of Assets and Liabilities, Revenue Statement, Distribution Statement, Statement of Movements in Capital Account and the Notes to the Accounts, where applicable, must be disclosed.

Statement of Assets and Liabilities

5. The following must be separately disclosed—
 - (a) total value of investments;
 - (b) bank balances;
 - (c) formation costs;
 - (d) dividends and other receivables;
 - (e) amounts receivable on subscription;
 - (f) bank loans and overdrafts or other forms of borrowing;
 - (g) amounts payable on redemption;
 - (h) distributions payable;
 - (i) total value of all assets;
 - (j) total value of all liabilities;
 - (k) *net* asset value;
 - (l) number of units in issue;
 - (m) *net* asset value per unit.

Revenue Statement

6.
 - (1) Total investment income net of withholding tax, broken down by category.
 - (2) Total other income, broken down by category.
 - (3) Equalisation on issue and cancellation of units.
 - (4) An itemised list of various costs which have been debited to the scheme including—

- (a) fees paid to the management company;
- (b) remuneration of the custodian;
- (c) amortization of formation costs;
- (d) directors' fee and remuneration;
- (e) safe custody and bank charges;
- (f) auditors' remuneration;
- (g) interest on borrowings;
- (h) fees paid to investment adviser, if any;
- (i) other amounts paid to any connected persons of the collective investment scheme;
- (j) legal and other professional fees;
- (k) any other expenses borne by the scheme.

(5) Taxes.

(6) Amounts transferred to and from the capital account.

(7) Net income to be carried forward for distribution.

Distribution Statement

7. (1) Amount brought forward at the beginning of the period.
- (2) Net income for the period.
- (3) Interim distribution per unit and date of distribution.
- (4) Final distribution per unit and date of distribution.
- (5) Undistributed income carried forward.

Statement of Movements in Capital Account

8. (1) Value of the scheme as at the beginning of the period.
- (2) Number of units issued and the amounts received upon such issuance (after equalization if applicable).
- (3) Number of units redeemed and the amount paid on redemption (after equalization if applicable).
- (4) Any items resulting in an increase/decrease in value of the scheme including—
- (a) surplus/loss on sale of investments;
 - (b) exchange gain/loss;
 - (c) unrealised appreciation/diminution in value of investments;
 - (d) net income for the period less distribution.
- (5) Amounts transferred to and from the revenue account.

- (6) Value of the scheme as at the end of the period.

Notes to the Accounts

9. The following matters shall be set out in the notes to the accounts—

- (1) Principal accounting policies—

- (a) the basis of valuation of the assets of the scheme including the basis of valuation of unquoted and unlisted securities;
- (b) the revenue recognition policy regarding dividend income and other income;
- (c) foreign currency translation;
- (d) the basis of valuation of forward foreign exchange and futures contracts;
- (e) the basis of amortization of formation costs;
- (f) taxation;
- (g) any other accounting policy adopted to deal with items which are judged material or critical in determining the transactions and in stating the disposition of the scheme:

Any changes to the accounting policies and their financial effects upon the accounts should also be disclosed.

- (2) Transactions with Connected Persons the following transactions should be disclosed:

- (a) details of all transactions entered into during the period between the scheme and the scheme management company, investment adviser, the directors of the scheme or any entity in which these parties or their connected persons have a material interest; and
- (b) the name of any director of the scheme or any connected person of the director if any such person becomes entitled to profits from transactions in shares or from management of the scheme and the amount of profits to which such person becomes entitled.

- (3) Borrowings

State whether the borrowings are secured or unsecured and the duration of the borrowings.

- (4) Contingent liabilities and commitments

Give details of any contingent liabilities and commitments of the scheme.

- (5) If the free negotiability of any asset is restricted by statutory or contractual requirements, this must be stated.

SIXTH SCHEDULE*(Regulation 37(3))***ANNUAL AND HALF-YEARLY REPORTS***A: Report of the management company*

The following matters must be set out in every annual and half-yearly report of the management company—

1. The names and addresses of the following—
 - (a) the company;
 - (b) the custodian;
 - (c) any investment adviser;
 - (d) the registrar;
 - (e) the auditor.
2. The objectives of the scheme.
3. The company's policy for achieving the objectives of the scheme.
4. A statement that the scheme is authorised within the meaning of the law.
5. A statement as to which category of scheme the collective investment scheme belongs; and in the case of an umbrella collective investment scheme, this statement is to be made separately in relation to each constituent part.
6. A review of the company's investment activities during the period to which the report relates.
7. Particulars of any significant change in the scheme particulars made since the making of the last report by the company.
8. A statement of the amount (if any) to be distributed to participants or accumulated in respect of the period in question.
9. A statement of the total number of the units of each type in existence or deemed to be in existence at the beginning of the period to which the report relates and at the end of that period.
10. A statement of the mid-market value per unit of the property of the scheme at the beginning of the period to which the report relates and at the end of that period.
11. A statement of any subdivision or consolidation of units that has been effected during the period to which the report relates.
12. Any other significant information that would enable participants to make an informed judgement on the development of the activities of the scheme during this period and the results of those activities as at the end of that period.

B: Portfolio statement

The following shall be set out in the portfolio statement included in the report to the company:

1. The changes in the investments in the property of the scheme since the end of the preceding accounting period showing whether they are new holdings, or changes in existing holdings, and giving a description of each holding and showing the net changes in the number of units in or the nominal value of that holding since the end of the preceding accounting period.
2. The total cost of purchases of investments since the last portfolio statement.
3. The total proceeds of sales of investments since the last portfolio statement.

C: Comparative table

The following matters shall be set out in the comparative table included in the report of the company—

1. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year—
 - (a) the total net asset value;
 - (b) the net asset value per unit.
2. A performance record over the last ten financial years or, if the scheme has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing the highest issue price and the lowest redemption price of the units during each of those years.

D: Report of the auditor

The report of the auditor to the holders for any annual accounting period shall state—

- (a) whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with generally accepted accounting principles and in accordance with these Regulations and the formation documents;
- (b) without prejudice to the foregoing, whether in the auditor's opinion a true and fair view is given of the financial position of the scheme as at the end of that period;
- (c) if the auditor is of the opinion that proper accounting records have not been kept by the company or that the accounts are not in agreement with the company's accounting records, that fact together with any resulting qualification;
- (d) if the auditor has not been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, that fact together with any resulting qualifications; and
- (e) if the auditor is of the opinion that the information given in the report of the scheme management company for that period is inconsistent with the accounts, that fact together with any resulting qualifications.

E: Report of the custodian

The report of the custodian to the participants for any annual accounting period shall state whether in the custodian's opinion the company has managed the scheme in that period—

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the company and custodian by the formation documents, by the scheme particulars and by these Regulations; and
 - (b) otherwise in accordance with the provisions of the formation documents, the scheme particulars and these Regulations; and if the company has not done so, the respects in which it has not done so and the steps which the custodian has taken in respect thereof.
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SECURITIES (DISCIPLINE) REGULATIONS

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

REGULATION

1. Short title
2. Convening of Disciplinary Committee
3. Secretary
4. Majority decision

PART 2

PRE-HEARING MATTERS

5. Statement of case
6. Exchange of evidence
7. Directions of Disciplinary Committee

PART 3

THE DISCIPLINARY COMMITTEE HEARING

8. Notice of hearing
9. Admission of charges
10. Attendance
11. Burden and standard of proof
12. Evidence and directions
13. Conduct of hearing
14. Record of hearing
15. Decision
16. Costs

SECURITIES (DISCIPLINE) REGULATIONS – SECTION 175

(S.R.O.s. 27/2002 and 85/2005)

Commencement

[28 February 2002]

PART 1

PRELIMINARY

Short title

1. These Regulations may be cited as the Securities (Discipline) Regulations.

Convening of Disciplinary Committee

2 (1) If the Commission refers disciplinary proceedings to the Disciplinary Committee, the chairman of the Disciplinary Committee shall convene a meeting of the Disciplinary Committee to hear and determine the matter.

(2) All members of the Disciplinary Committee must be present at a meeting to constitute a quorum.

Secretary

3. (1) The Commission shall appoint a suitably qualified and experienced individual to act as secretary to the Disciplinary Committee to carry out its administrative functions.

(2) The secretary may sit with the Disciplinary Committee but may not take part in its deliberations.

Majority decision

4. If the members of the Disciplinary Committee are not unanimous as to any finding, penalty or other matter, the decision of the Disciplinary Committee must be that of the majority provided that, if the members are equally divided, the decision must be that which most favours the licensee.

PART 2

PRE-HEARING MATTERS

Statement of case

5. Within three days of the referral of disciplinary proceedings to the Disciplinary Committee, the Commission shall serve on the licensee and the secretary to the Disciplinary Committee a statement of case consisting of the charge and a summary of the principal facts to be relied on.

Exchange of evidence

6. After the service of a statement of case under regulation 5, except where the licensee has notified the Commission in writing that all charges are to be admitted—

- (a) the Commission shall, within seven days of the service of the statement of case, serve on the licensee and the secretary to the Disciplinary Committee copies of any documents on which it intends to rely and a list of the witnesses it proposes to call together with an outline of their proposed evidence; and
- (b) the licensee shall, within fourteen days of the Commission complying with the requirement under paragraph (a), serve on the Commission and the secretary to the Disciplinary Committee a statement of defence which must include—
 - (i) its intended pleas to the charges;
 - (ii) the evidence of the Commission that is agreed;
 - (iii) the documents that are agreed;
 - (iv) the admission of facts the licensee makes; and
 - (v) a list of the witnesses it proposes to call together with an outline of their proposed evidence.

Directions by Disciplinary Committee

7. The Disciplinary Committee may give directions and take whatever other steps it considers appropriate for the clarification of the facts and issues and generally for their fair and efficient presentation.

PART 3

THE DISCIPLINARY COMMITTEE HEARING

Notice of hearing

8. The secretary to the Disciplinary Committee shall give the licensee and the Commission not less than fourteen days written notice of the time and place of a hearing.

Admission of charges

9. The licensee may admit all or any of the charges referred to in the Commission's statement of case by notice in writing to the secretary to the Disciplinary Committee not less than two days before the day of the hearing.

Attendance

10. (1) The licensee shall attend the hearing by its principal and may be represented by a legal practitioner.

(2) If the licensee fails to attend the hearing, the Disciplinary Committee may proceed in the absence of the licensee.

Burden and standard of proof

11. (1) The burden of proof shall be on the Commission.
- (2) The standard of proof shall be that applicable in civil proceedings (the balance of probability).

Evidence and directions

12. Proceedings at the Disciplinary Committee hearing shall be governed by these Regulations and by the rules of natural justice, subject to which the Disciplinary Committee may—

- (a) admit any evidence whether oral or written, whether direct or hearsay, without any requirement that it be on oath, and whether or not the same would be admissible in a court of law;
- (b) make directions with regard to the conduct of and the procedure at the hearing as the Disciplinary Committee considers appropriate for securing a proper opportunity for the licensee to answer the case against it and otherwise as may be just.

Conduct of hearing

13. In conducting the hearing the Disciplinary Committee may regulate its sittings and apply rules on procedure and practice as it sees fit, provided that—

- (a) the Disciplinary Committee shall act fairly and give the licensee a reasonable opportunity to make written or oral representations, to call witnesses and to cross-examine any witness called against the licensee;
- (b) the Disciplinary Committee may determine the matter and any penalty on the basis of written evidence and representations if, having regard to the nature and gravity of the matter in issue, it is satisfied that it is suitable for determination and the licensee consents to the procedure being adopted;
- (c) in determining the matter by way of oral hearing, the Disciplinary Committee—
- (i) shall hear the matter in private;
- (ii) may permit the licensee to be represented by a legal practitioner;
- (d) where the matter in issue against a licensee is found to be proved, the Disciplinary Committee shall, before exercising its disciplinary powers, allow the licensee, or anyone acting on its behalf, to address it in mitigation of penalty.

Record of hearing

14. (1) The Disciplinary Committee shall cause a record to be made of the hearing electronically or otherwise.
- (2) The licensee may obtain a transcript or copy of the record on payment of the cost.

(3) The Disciplinary Committee shall transmit a copy of the record to the Commission.

Decision

15. Following the conclusion of the hearing of the disciplinary proceedings, the Disciplinary Committee shall deliver to the licensee and the Commission a written decision comprising a summary of—

- (a) the charges admitted;
- (b) its findings, with a statement of its reasons, as to whether any charges not admitted are proved;
- (c) its findings or views on any facts or matters to which it wishes to draw attention;
- (d) any penalties and order for costs imposed; and
- (e) any recommendation of suspension or revocation.

Costs

16. The Disciplinary Committee may recommend to the Commission that each party to the disciplinary proceedings bear their own costs.

**SECURITIES (ACCOUNTING AND FINANCIAL
STATEMENTS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

REGULATION

1. Short title and application
2. Interpretation
3. Contravention

PART 2

ACCOUNTING RECORDS

4. Duty to keep accounting records
5. Records to be up to date
6. Audit trail
7. Conformity with accounting standards
8. Retention of records
9. Inspection of records
10. Securities market may impose additional requirements on members

PART 3

FINANCIAL STATEMENTS AND RETURNS

11. Duty to prepare annual financial statements
12. Balance sheet to give a true and fair view
13. Profit and loss account to give a true and fair view
14. Form and content of financial statements
15. Commission may require returns
16. Licensee to obtain auditor's report etc.
17. Annual financial statements, etc to be submitted to Commission
18. Contents of auditor's report
19. Qualified reports

SECURITIES (ACCOUNTING AND FINANCIAL STATEMENTS) REGULATIONS –
SECTION 175

(S.R.O. 28/2002)

Commencement

[28 February 2002]

PART 1

PRELIMINARY

Short title and application

1. (1) These Regulations may be cited as the Securities (Accounting and Financial Statements) Regulations.

(2) These Regulations shall apply to all broker dealers and limited service brokers licensed by the Commission.

Interpretation

2. In these Regulations—

“financial year” means—

- (a) the period of twelve months beginning with the day on which the licensee commences to carry on the business in respect of which the licence has been granted; and
- (b) each subsequent period of twelve months beginning with the day following the day as at which an annual balance sheet of the licensee is prepared for the purposes of these Regulations; and

“licensee” means a broker dealer or limited service broker.

Contravention

3. A licensee who contravenes any provision of these Regulations commits a disciplinary offence.

PART 2

ACCOUNTING RECORDS

Duty to keep accounting records

4. (1) A licensee shall keep accounting records which are sufficient to show and explain its securities transactions (whether they are effected on its own behalf or on behalf of others) and that—

- (a) disclose with reasonable accuracy, at any time, the financial position of the licensee at that time; and

- (b) enable the licensee 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 must in particular contain—
- (a) entries from day to day of all sums of money received and expended by the licensee, and the matters in respect of which the receipt and expenditure takes place;
- (b) a record of all assets and liabilities of the licensee including any commitments or contingent liabilities;
- (c) entries from day to day of all purchases and sales of securities by the licensee distinguishing those which are made by the licensee on its own account and those which are made by it on behalf of others;
- (d) 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 a customer bank account, identifying the persons to whom each receipt or payment relates;
- (e) a record of balances—
- (i) on customer bank accounts;
- (ii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and
- (f) details of all securities that are—
- (i) the property of the licensee, showing by whom they are held and whether, if held otherwise than by the licensee itself, they are so held as collateral against loans or advances; and
- (ii) not the property of the licensee but for which the licensee 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 licensee 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) Where these Regulations require information to be recorded it 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 that a licensee is required to keep must conform to the requirements of international accounting standards.

Retention of records

8. A licensee shall preserve the accounting records that it is required to keep under regulation 4 for at least seven 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 Commission, or any person authorised by the Commission to receive the documents, on demand at a reasonable time and place that may be specified by the Commission or that person.

Securities exchange may impose additional requirements on members

10. Nothing in these Regulations shall prevent a licensed securities exchange from imposing on licensees who are members of the exchange any further obligations or requirements that may be 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.

PART 3

FINANCIAL STATEMENTS AND RETURNS

Duty to prepare annual financial statements

11. A licensee shall prepare for each of its financial years annual financial statements that must 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.

Balance sheet to give a true and fair view

12. The balance sheet must give a true and fair view of the state of affairs of the licensee 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 must give a true and fair view of the profit or loss of the licensee for the financial year.

Form and content of financial statements

14. The financial statements of a licensee must comply with the requirements of international accounting standards.

Commission may require returns

15. (1) The Commission may by written notice require a licensee to submit periodic returns to it.

(2) In addition to any periodic returns required under subregulation (1), the Commission may by written notice require a licensee, either generally or in a particular case or class of case, to submit exceptional returns to the Commission.

Licensee to obtain auditor's report, etc.

16. A licensee shall submit, within one month after the end of each financial year, its annual financial statements to its auditor for audit and shall obtain an auditor's report that complies with the requirements of regulation 18.

Annual financial statements, etc. to be submitted to Commission

17. (1) A licensee shall submit, within three months after the end of each financial year, its auditor's report to the Commission together with—

- (a) its annual financial statements; and
- (b) confirmation in writing that it has complied with every regulation that it is required to comply and any further information or confirmation as the Commission 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 must when submitted by the licensee to the Commission be accompanied by a written document signed by two directors stating whether all—

- (a) the accounting records of the licensee have been made available to the auditor for the purposes of the audit;
- (b) transactions undertaken by the licensee have been properly reflected and recorded in its accounting records; and
- (c) other records of the licensee and related information have been made available to the auditor.

Contents of auditor's report

18. (1) The auditor's report must state whether the annual financial statements of the licensee have been audited in accordance with approved auditing standards.

(2) The auditor's report must also state whether in the opinion of the auditor—

- (a)* the annual financial statements of the licensee 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 licensee as 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 licensee for the financial year;
- (d)* the licensee has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Regulations;
- (e)* the licensee has kept customer money properly segregated in accordance with regulation 33 of the Securities (Conduct of Business) Regulations;
- (f)* the balance sheet and the profit and loss account are in agreement with the licensee's accounting records;
- (g)* all the information and explanations obtained were to the best of the auditor's knowledge and belief necessary for the purposes of the audit;
- (h)* the licensee has maintained throughout the financial year systems adequate to enable the licensee to identify documents evidencing title, to securities held in safekeeping for the licensee's customers in accordance with regulation 24 of the Securities (Conduct of Business) Regulations ; and
- (i)* the licensee was in compliance with the requirements of regulation 24 of the Securities (Conduct of Business) Regulations as at the date on which the balance sheet was prepared.

Qualified reports

19. (1) If 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 report and specify the relevant requirements and the respects in which they have not been met.

(2) If the auditor fails to obtain all the information and explanations that, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, that fact shall be stated in the report.

(3) If the auditor is unable to form an opinion as to whether one or more of the requirements of regulation 18 have been met, the auditor shall state that fact in the report and specify those requirements and give the reasons why it was not possible to form an opinion.

SECURITIES (MINIMUM CAPITAL REQUIREMENTS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
2. Interpretation
3. Minimum capital requirements
4. Reconstitution of Capital

SCHEDULE

SECURITIES (MINIMUM CAPITAL REQUIREMENTS) REGULATIONS – SECTION 175

(S.R.O. 47/2003)

Commencement

[1 January 2002]

Short title

1. These Regulations may be cited as the Securities (Minimum Capital Requirements) Regulations.

Interpretation

2. In these Regulations—

“**Commission**” refers to the Eastern Caribbean Securities Regulatory Commission established by Article 3 of the Eastern Caribbean Security Regulatory Commission Agreement dated 24th November 2000.

“**licensee**” means a person who has been granted any of the licences granted under the Securities Act to carry on any of the business specified in the second column of the Schedule.

“**unimpaired**”, in relation to capital, means capital which has not been expended and which is free from liens and other encumbrances.

Minimum capital requirements

3. An applicant for a licence referred to in the second column of the Schedule shall maintain in Montserrat unimpaired paid up capital of not less than the amount prescribed in the third column of the Schedule in a form approved by the Commission.

Reconstitution of Capital

4. Where there is a deficiency in the prescribed minimum capital, the Commission may direct the licensee to present a plan that is satisfactory to the Commission to reconstitute its capital within a specific time period.

SCHEDULE

NO.	LICENCE	AMOUNT
1.	Broker-dealer	EC\$1,000,000
2.	Limited service broker	EC\$250,000
3.	Investment adviser	EC\$250,000
4.	Custodian	EC\$250,000
5.	Securities exchange	EC\$5,000,000
6.	Clearing agency	EC\$1,000,000
7.	Securities registry	EC\$250,000

SECURITIES (UNCERTIFICATED SECURITIES) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
 2. Interpretation
 3. Keeping of registers of members
 4. Keeping of registers of debt securities
 5. Effect of entries on registers
 6. Rectification of registers
 7. Recording of transfers of securities
 8. Recording of company liens on shares
 9. Recording of charges on securities
 10. Transmission of securities
 11. Joint holders of securities
 12. Re-materialisation
 13. Duties of intermediaries
 14. Access by issuers to records of a share registry
 15. Keeping of records of approved forms
 16. Opening times of a share registry
 17. Approved forms
 18. Power of Commission to issue directions regarding the transfer of registers of securities
 19. Registry system security and capabilities
 20. Defaults and contraventions
 21. Transitional provisions
- Schedule

**SECURITIES (UNCERTIFICATED SECURITIES)
REGULATIONS - SECTION 155**

(S.R.O. 84/2005)

Commencement

[1 November 2005]

Short title

1. These Regulations may be cited as the Securities (Uncertificated Securities) Regulations.

Interpretation

2. In these Regulations—

“**the Companies Act**” means the Companies Act (Cap. 11.12);

“**the Securities Act**” means the Securities Act (Cap. 11.01);

“**approved form**” means a form approved by the Commission pursuant to regulation 17;

“**broker dealer**” means a broker dealer within the meaning of section 2 of the Securities Act;

“**certificate**” means any certificate, instrument or other document of, or evidencing, title to securities;

“**charge**” includes any mortgage, assignment, pledge or lien (other than a lien of a company on shares issued by it) on any security for securing money or money's worth;

“**clearing agency**” means the holder of a licence to operate a clearing agency granted by the Commission or a company which is deemed by the Securities Act to be the holder of such licence;

“**the Commission**” means the Eastern Caribbean Securities Regulatory Commission;

“**company**” means a company within the meaning of section 2 of the Securities Act;

“**corporate debt**” means a debt security issued by a company;

“**court**” means the Eastern Caribbean Supreme Court or any court with similar jurisdiction established in succession to that Court;

“**custodian**” means the holder of a licence to operate as a custodian granted by the Commission or a company which is deemed by the Securities Act to be the holder of such licence;

“**debt securities**” means securities other than shares;

“**dematerialised instruction**” means an instruction sent or received by means of a registry system pursuant to these Regulations;

“**enactment**” means a statute or regulation having the force of law;

“**holder**”, in relation to securities, means the person who is recorded on a register of securities as holding title to those securities and “**hold**” shall be construed accordingly.

“**intermediary**” includes a broker dealer, a clearing agency and a custodian;

“**issuer**” means an issuer within the meaning of section 2 of the Securities Act;

“**listed**” means listed on a securities exchange and “**list**” shall be construed accordingly;

“**member**” means the holder of shares of a company;

“**officer**”, in relation to a company, means a director or liquidator;

“**on line issuer service**” means a service provided by electronic means by a share registry to a company to enable the company to access its register of members;

“**person**” includes a company and an individual;

“**private transfer**” means a transfer of a security or units of that security by a member or holder of a security to another person effected directly without the services of a securities exchange;

“**rectify**” means to correct by removing errors;

“**register of debt securities**” means the register of holders of listed debt securities maintained by a share registry;

“**register of members**”, in relation to a listed company or a company which proposes to list, means the register of members of a company maintained by a share registry;

“**register of securities**” means either a register of members or a register of debt securities;

“**registry account number**” means a number issued by a share registry to a holder in respect of securities held by him whether solely or jointly with another person or persons;

“**registry system**” means a computer based system, and procedures, operated by a share registry which enables title to units of a security to be evidenced and transferred without a written instrument and which facilitates supplementary and incidental matters;

“**securities exchange**” means the holder of a securities exchange licence granted by the Commission under the Securities Act or a company which is deemed by the Securities Act to be the holder of such licence;

“**securities**” has the meaning given by section 2 of the Securities Act;

“**share registry**” means the Eastern Caribbean Central Securities Registry Limited and any holder of a licence granted under section 42 of the Securities Act;

“**share**” means a share (or stock) in the capital of a company;

“**Treasury Department**” means the department of the Government of Montserrat responsible for the collection of stamp duty;

“trustee in bankruptcy” means a trustee in bankruptcy of a debtor's estate appointed under the Bankruptcy Act or any enactment which replaces it;

“uncertificated”, in relation to a unit of a security, means that title to the unit is recorded on a register of securities and may, pursuant to these Regulations, be transferred by means of a registry system; and **“certificated”**, in relation to a unit of a security, means that the unit is not an uncertificated unit;

“unit”, in relation to a security, means the smallest possible transferable unit of the security (for example a single share).

Keeping of registers of members

3. (1) In respect of every listed company there shall be a register of members kept and entered up by a share registry on its registry system in accordance with these Regulations.

(2) Any company which proposes to list may, before listing, if its articles of association and/or byelaws permit, contract with a share registry for its register of members to be kept and entered up by the share registry on its registry system in accordance with these Regulations.

(3) References in the Companies Act to a company's register of members shall, unless the context otherwise requires, be construed in relation to a listed company or a company to which paragraph (2) of this regulation applies as referring to the company's register of members kept pursuant to these Regulations.

(4) When a register of members is established pursuant to paragraph (1) or paragraph (2) of this regulation the title to shares of the company shall thereafter be evidenced and transferred in manner stipulated by these Regulations and, subject to regulation 21, share certificates issued by the company shall cease to have effect.

(5) In relation to every listed company and every company to which paragraph (2) of this regulation applies the share registry shall enter on the register of members—

- (a) in alphabetical order the full name and address of each member who is an individual, or in the case of a corporate body its full name, the place where it is incorporated and the address of its registered or principal office;
- (b) with those names and addresses a statement of the shares held by each member and, where the company has more than one class of issued shares, distinguishing each share by its class;
- (c) an identification number distinguishing each member from the other members;
- (d) the registry account number of each member;
- (e) the total amount paid up on the shares;
- (f) where the company has converted any of its shares into stock, the register of members shall show the amount and class of stock held by each member, instead of the amount of shares and the particulars relating to shares specified in sub-paragraph (b);

(g) If any share of the company is held by two or more persons the register of members shall contain the names and addresses of all such members.

(6) An entry relating to a member of a company who has ceased to hold any shares in the company may be removed from the register of members after the expiration of ten years beginning with the day on which the member ceased to hold any such shares.

(7) No notice of any trust, expressed, implied or constructive, shall be entered on a register of members, or a part of such a register, or be receivable by a share registry. This provision shall not prohibit the entry of liens and charges pursuant to regulations 8 and 9.

(8) Every listed company shall within thirty days of its acceptance for listing on a securities exchange enter into a contract with a share registry for the share registry to keep its register of members pursuant to these Regulations.

(9) On entering into a contract with a share registry for the keeping by the share registry of its register of members pursuant to paragraph (2) or paragraph (8) the company shall immediately close its register of members and transfer it to the share registry.

(10) The company and the share registry shall complete the transfer of the register of members within thirty days and the register shall be re-opened by the share registry within seven days after the transfer is completed.

(11) (i) The share registry shall within thirty days of the opening of a register of members pursuant to this regulation at its cost provide each member whose name appears on the register of members with a written statement sent by ordinary mail containing—

- (a) the member's identification number;
- (b) the member's registry account number;
- (c) the name and address of the member as it appears on the registry of members, and
- (d) the amount and class of shares or stock held by the member.

(ii) The share registry shall at any time on the written request of a member and on payment by the member of a fee (of an amount approved by the Commission) provide the member with a written statement containing the information set out in paragraph (11)(i).

A statement provided pursuant to this regulation shall be effective only as a record of its contents as at its date.

Keeping of register of debt securities

4. (1) In respect of every listed issue of debt securities there shall be a register kept and entered up by a share registry on its registry system in accordance with these Regulations.

(2) Each register of debt securities shall comprise the following particulars which the share registry shall enter on it, namely—

- (a) in alphabetical order the full name and address of each holder who is an individual, or in the case of a corporate body its full name, the place where it is incorporated and the address of its registered or principal office;
- (b) the number of units of that security each such person holds;
- (c) an identification number distinguishing each holder from the other holders;
- (d) the registry account number of each holder;
- (e) If any relevant security is held by two or more persons the register shall contain the names and addresses of all such holders.

(3) No notice of any trust, expressed, implied or constructive, shall be entered on a register of debt securities, or a part of such register, or be receivable by a share registry. This provision shall not prohibit the entry of charges pursuant to regulation 9.

(4) An entry in a register of debt securities relating to a person who no longer holds the securities which are the subject of the entry may be removed from the register after the expiration of ten years beginning with the day on which the person ceased to hold any of those securities.

(5) The Commission shall give such directions as it considers necessary for the opening of a register of debt securities pursuant to this regulation.

Effect of entries on registers

5. (1) A register of members is prima facie evidence of any matters which are by these Regulations directed or authorised to be inserted in it.

(2) A register of debt securities is prima facie evidence of any matters which are by these Regulations directed or authorised to be inserted in it.

(3) A register of securities or an extract thereof shall be admissible in evidence in any court by means of a document printed from the registry system and certified by a director or authorised officer of the share registry which keeps the relevant register.

Rectification of registers

6. (1) A share registry who rectifies a register of securities kept by him shall immediately notify the issuer of the securities and any member or other person concerned of the change to the entry.

(2) Without prejudice to any lesser period of limitation or prescription, liability incurred by a share registry from the making or deletion of any entry in a register of securities, or from failure to make or delete any such entry, is not enforceable more than ten years after the date on which the entry was made or deleted or the failure first occurred.

(3) Without affecting the generality of regulation 3(3), section 244 of the Companies Act shall apply to any register of members kept pursuant to these Regulations.

Recording by a share registry of transfers of securities

7. (1) Upon completion of a transfer of units of a security in accordance with this regulation (and subject to paragraphs (2) to (6) inclusive thereof) a share registry shall record on the relevant register of securities the transfer of title to those units of that security.

(2) Subject to the provisions of this regulation a transfer of units of a security may be effected by—

- (i) a private transfer; or
- (ii) through an intermediary by way of a trade on a licensed securities exchange.

(3) A private transfer shall be effected by the transferor and the transferee completing and signing an approved form in accordance with regulation 17 and (if stamp duty is chargeable on the transfer) paying such stamp duty which shall be duly recorded on the approved form by the Treasury Department. If a transfer which complies with this paragraph is presented to a share registry the share registry shall subject to paragraphs 5 to 8 enter the transferee on the relevant register of securities as the holder of the security.

- (4)
 - (i) The holder of a security may contract with an intermediary for sale of units of the security on a securities exchange.
 - (ii) If such contract is made the intermediary shall by dematerialised instructions notify the share registry of the following details of the contract—
 - (a) the identification number of the holder of the security;
 - (b) the registry account number of the holder of the security;
 - (c) the number of units to be sold, and,
subject to paragraphs 5 to 8 of this regulation, the share registry shall enter on the relevant register the intermediary as holder of the security (or the units thereof to be sold).
 - (iii) If the security (or units thereof) is sold by the intermediary he shall by dematerialised instructions notify the share registry of the sale and subject to paragraphs 5 to 8 of this regulation, the share registry shall enter on the relevant register the transferee (or an intermediary holding the security for the transferee) as holder of the security (or the units thereof sold).
 - (iv) If before a sale of units of a security is effected the contract referred to in paragraph 4(i) is for any reason terminated the intermediary shall promptly notify the share registry who shall enter the name of the prior holder on the register in place of the intermediary in respect of the security (or the relevant units thereof).

(5) A share registry shall refuse to record a transfer of title to a security if it has actual notice that—

- (a) the transfer is prohibited by order of a court; or
 - (b) the transfer is prohibited or avoided by or under an enactment; or
 - (c) the transfer is a transfer to a deceased person; or
 - (d) in the case of a share the company which issued the share has a lien thereon pursuant to the articles of association and/or byelaws of the company; or
 - (e) if a charge is recorded in respect of the security in the relevant register of securities; or
 - (f) on transfer the security is to be held jointly in the names of more persons than is permitted under the terms of the issue of the security.
- (6)** A share registry may refuse to record a transfer of title to a security—
- (a) if the transfer is to an entity which is not a natural or legal person; or
 - (b) where in respect of a dematerialised instruction received or purportedly received from an intermediary pursuant to regulation 7(4)(ii) the share registry has actual notice of any of the following facts or matters—
 - (i) that any information contained in the instruction is incorrect;
 - (ii) that the intermediary expressed to have sent the instruction did not send the instruction;
 - (iii) where relevant, that the person on whose behalf it was expressed to have been sent did not give to the intermediary his authority to send the instruction on his behalf;
 - (iv) that the instruction was not properly authenticated in accordance with the specifications of the share registry.

(7) A share registry shall not record a transfer of title to a security otherwise than in accordance with paragraph (1) unless he is required to do so by order of a court or by or under an enactment.

(8) Paragraph (7) shall not be taken to prevent a share registry from entering on a register of securities as a holder of a security—

- (a) a person to whom title to units of a security has been transmitted by operation of law;
- (b) a company which has enforced its lien on a security in compliance with regulation 8;
- (c) a chargee who has enforced his charge on a security in compliance with regulation 9.

(9) For the purpose of determining under paragraph (5) or paragraph (6)(b) or regulation 8(4) or 9(3), (9) and, (13) whether a share registry has actual notice of a matter listed in that paragraph or regulation the share registry shall not under any

circumstances be taken to be concerned to establish whether or not the fact or matter exists or has occurred.

Recording of company liens on shares

8. (1) A share registry shall enter in the registry system in respect of any share a lien held by the issuing company on the share of which lien the company has notified the share registry by delivery of an approved form executed by the company under its common seal and witnessed by a notary public.

(2) The share registry shall remove the entry of any lien entered pursuant to paragraph (1) if—

- (i) he receives from the issuing company an approved form of release of lien executed by the company under its common seal; or
- (ii) he receives an order of the court requiring him to remove the lien.

(3) Where under the provisions of its articles of association and/or byelaws a company becomes entitled to sell any shares in respect of which a lien has been entered on its register of members the company may make and present to the share registry a statutory declaration in a form approved by the Commission and present the form to the share registry who shall (unless prohibited by an order of the court) enter the company on the register of members as holder of the shares in place of the previous holder of the shares.

(4) A company which is entered on the register of members pursuant to paragraph (3) may sell and transfer the shares in any manner provided in regulation 7 and the transferee shall thereby obtain clear title to the shares without becoming concerned to ascertain whether or not the company was entitled to sell the shares unless he has actual notice that the company was not so entitled.

(5) If a purchaser obtains clear title to shares pursuant to paragraph (4) any right which the previous holder of the shares may have to any part of the proceeds of sale of the shares shall be a right *in personam* against the company.

(6) A share registry shall not be concerned to inquire whether a company has the right to sell the shares on which it has a lien and shall not be liable to the previous holder of the shares or to any other person if he enters a company on a register of members as holder of any shares where the company has complied with the provisions of paragraph (3).

Recording of charges on securities

9. (1) A share registry shall subject to paragraphs (2) and (3) enter in the relevant register in the registry system in respect of any security a charge held by any person on the security.

(2) The authorisation for the entry of a charge under paragraph (1) shall be the delivery to the share registry of an approved form duly executed in accordance with regulation 17 by the holder of the security and the chargee.

(3) A share registry shall refuse to record a charge pursuant to paragraph (1) if he has actual notice that—

- (a) the charge is prohibited by order of a court; or
 - (b) the charge is prohibited or avoided by or under an enactment; or
 - (c) the chargee is a deceased person; or
 - (d) in the case of a share the company which issued the share has a lien thereon recorded under regulation 8 or has presented an approved form of lien to the share registry prior to the presentation of the approved form of charge.
- (4) A share registry may refuse to record a charge if the charge is to an entity which is not a natural or legal person.
- (5) Subject to any provisions to the contrary contained in the document creating any charge, charges shall have priority in order of the entry of the same in the relevant register.
- (6) The share registry shall remove the entry of any charge entered pursuant to paragraph (1) if—
- (i) he receives from the chargee an approved form of release of charge duly executed by the chargee in accordance with regulation 17;
 - (ii) he receives an order of the court requiring him to do so.
- (7) An approved form of charge shall contain an acknowledgment by the charger that—
- (a) entry of the charge on the relevant register of securities will preclude any transfer by the charger of the charged security; and
 - (b) the charge may not be removed without the consent of the chargee or pursuant to a court order; and
 - (c) if the chargee enforces the charge he may be entered on the relevant register of securities as holder of the security in place of the charger.
- (8) Where under the terms of his agreement with the charger a chargee becomes entitled to enforce his charge in respect of any security the chargee may make and present to the share registry a statutory declaration in a form approved by the Commission and present the declaration to the share registry who shall (unless prohibited by an order of the court) enter the chargee on the relevant register of securities as holder of the security in place of the charger.
- (9) A charger who is entered on a register of securities pursuant to paragraph 8 may sell and transfer the security in any manner provided in regulation 7 and the transferee shall thereby obtain clear title to the security without becoming concerned to ascertain whether or not the charger was entitled to enforce the charge unless he has actual notice that the chargee was not so entitled.
- (10) If a purchaser obtains clear title to a security pursuant to paragraph (9) any right which the charger may have to any part of the proceeds of sale of the security shall be a right *in personam* against the chargee.
- (11) A share registry shall not be concerned to inquire whether a chargee has the right to enforce his charge and shall not be liable to the charger or to any other person

if he enters a charge on a securities register as holder of any security where the chargee has complied with the provisions of paragraph (8).

(12) A chargee may subject to paragraph (13) transfer a subsisting charge. The authorisation for the entry of a transfer of a charge shall be the delivery to the share registry of an approved form executed in accordance with regulation 17 by the holder of the charge and the transferee.

(13) A share registry shall refuse to record a transfer of a charge pursuant to paragraph (12) if he has actual notice that—

- (a) the transfer is prohibited by order of a court; or
- (b) the transfer is prohibited or avoided by or under an enactment; or
- (c) the transferee is a deceased person.

(14) A share registry may refuse to record the transfer of a charge if the transfer is to an entity which is not a natural or legal person.

Transmission of securities

10. (1) On the death of a holder of securities his personal representative shall be the only person recognised by the share registry as having any title to the securities.

(2) The personal representative of the deceased holder shall on production to the share registry of a Grant of Probate or Letters of Administration issued by the court be entitled to—

- (a) elect to become the holder of the securities; or
- (b) transfer the securities to another person.

(3) A person who becomes entitled to securities in consequence of the bankruptcy of a holder of the securities shall on production to the share registry of an order of the court appointing him as trustee in bankruptcy be entitled to—

- (a) elect to become the holder of the securities; or
- (b) transfer the securities to another person.

(4) If the personal representative or trustee in bankruptcy elects to become the holder of the securities the share registry shall enter his name on the relevant register of securities in place of the deceased or bankrupt holder as the case may be.

(5) If the personal representative or trustee in bankruptcy transfers the securities all provisions of these Regulations relating to the transfer of securities shall apply to the transfer as if it were a transfer executed by the holder and the death or bankruptcy of the holder had not occurred.

(6) A person becoming entitled to a security in consequence of the death or bankruptcy of a holder of the security shall have the rights to which he would be entitled if he were the holder of the security except that in the case of shares or corporate debt he shall not, before being recorded by the share registry as the holder of the security, be entitled in respect of it to attend or vote at any meeting of the company or at any separate meeting of the holders of any class of shares in the company or at any meeting of the holders of corporate debt of the company as the case may be.

Joint holders of securities

11. (1) The rights of survivorship and other rights of joint shareholders given by the articles of association and/or byelaws of a company shall be binding on a share registry.

(2) If the articles of association and/or byelaws are silent as to the rights *inter se* of joint shareholders the rights shall be those provided by the Companies Act or, if no provision is made by the Companies Act, by the common law.

(3) Subject to paragraph (5) any dealing with or instructions in respect of shares which are jointly held may be effected only by all joint shareholders unless one or more of them is empowered by Power of Attorney (executed by each grantor in the presence of a notary public and duly stamped by the Treasury Department) to issue instructions and to deal with the shares on behalf of the others.

(4) A notarised copy of any Power of Attorney made pursuant to paragraph (3) shall be delivered to the share registry and shall have no effect in relation to this regulation until it is so delivered.

(5) Where any one or more joint shareholders or joint holders of any other security is a minor no dealings may be effected with the security save pursuant to and in accordance with an order of a court.

Re-materialisation

12. (1) This regulation applies to—

- (a) any company which for any reason ceases to be listed (herein ‘a de-listed company’);
- (b) any company which proposes to list and whose register of members is kept by a share registry and which thereafter decides not to list.

(2) A de-listed company or a company referred to in paragraph (1)(b) shall within three months of the date of its de-listing or the date of its decision not to list (as the case may be) and notwithstanding any provision in its articles of association and/or byelaws, establish a register of members and issue a share certificate to each member of the company at the date of de-listing or the date of its decision not to list (as the case may be) for the shares of the company held by the member.

(3) The register of members kept by the licensed share registry shall be used for the purposes of compliance with paragraph 2 and all entries recorded on that register of members shall be recorded on the register of members established by the company pursuant to this regulation.

(4) A company to which this regulation applies shall notwithstanding any provision of its articles of association and/or byelaws comply with provisions of the Companies Act set out in the Schedule.

(5) The Commission shall monitor and verify the establishment by the company of its register of members pursuant to paragraphs 2 and 3 and shall, when in its opinion the process is complete, notify the share registry who shall then close the register of members kept by it.

Duties of intermediaries

13. (1) Every intermediary shall maintain such records and follow such procedures as the Commission may from time to time direct or authorise of or relating to securities in his custody or control or which he is authorised to sell or to purchase.

(2) The Commission may impose conditions for the accounting and payment by intermediaries of monies held by them for the account of holders of securities on whose behalf they act.

Access by issuers to records of a share registry

14. (1) Every issuer shall contract with a share registry which maintains a register of securities issued by it for on line issue service.

(2) The right given by the Companies Act for inspection of the register of members shall be exercised by means of access through the on line issue service at the registered office of the company.

Keeping of records of approved forms

15. (1) A share registry shall retain for a period of ten years from the date on which it ceases to have effect each approved form and each Power of Attorney delivered to him pursuant to these Regulations and shall note on each such document or form the date and time of its receipt by the share registry.

(2) Where a company transfers its register of securities from one share registry to another, the transferee share registry shall take possession of and retain documents and forms as provided in paragraph (1), provided that where any document or form has already ceased to have effect the transferee share registry shall only be required to retain it for the un-expired portion of the statutory ten year period, and the obligations of the share registry that previously held the register of securities shall cease as soon as the transferee share registry takes possession.

(3) A share registry shall record in the relevant register the date and time of its receipt as shown on the approved form.

Opening times of a share registry

16. (1) A share registry shall remain open to the public for a minimum of 3 hours on each day which is not a Saturday, Sunday or public holiday.

(2) A notice of the opening hours determined by the share registry pursuant to this regulation and any changes thereto, shall be published in the Official Gazette.

Approved forms

17. (1) A share registry shall submit to the Commission all forms which it proposes to use for the purposes of regulations 7, 8 and 9 and shall notify the Commission from time to time of any changes which he proposes to make to any such form and the share registry shall not use any such form unless the form is approved by the Commission.

(2) Unless otherwise provided in these Regulations, execution by each party of an approved form shall be witnessed by—

- (a) an employee of a share registry; or
- (b) a notary public; or
- (c) a principal licensed by the Commission.

(3) The witness to the signature of each party shall sign the form below the signature of the party and shall write, below his signature, his full name, address and occupation and, in the case of a notary public, shall affix his seal of office to the form.

Power of Commission to issue directions regarding the transfer of registers of securities

18. If the Commission suspends or revokes the licence of a share registry or if a share registry fails to comply with any direction given to him by the Commission under section 67 of the Securities Act the Commission may (without prejudice to any other power which it may have under the Securities Act) by notice in writing require the share registry to transfer any register of securities to any other person and the Commission may give such incidental and consequential directions as may appear to the Commission as necessary for the protection of the integrity, safety and accuracy of the register of securities.

Registry system security and capabilities

19. (1) A registry system must enable the share registry to comply with its obligations under these Regulations and, without affecting the generality of the foregoing, the registry system must be constructed and operate in such a way—

- (a) so as to ensure the ongoing integrity, safety and accuracy of all entries made in it;
- (b) so as to minimise the possibility of unauthorised access to, or modification of, any program or data held in any computer forming part of the registry system;
- (c) that each dematerialised instruction is properly authenticated in accordance with the specifications of the share registry which shall provide that each dematerialised instruction—
 - (i) is identifiable as being from the computers of a particular intermediary; and
 - (ii) is designed to minimise fraud and forgery;
- (d) that each dematerialised instruction, in accordance with the specifications of the share registry, expresses by whom it was sent and, where relevant, on whose behalf it has been sent;
- (e) that the possibility for an intermediary to send a dematerialised instruction on behalf of a person from whom he has no authority is minimised;
- (f) that each dematerialised instruction, in accordance with the specifications of the share registry, indicates, where it is sent to an intermediary or the share registry, that it is addressed to that intermediary or the share registry.

(2) A registry system must ensure that the system can send and respond to properly authenticated dematerialised instructions in sufficient volume and speed.

(3) Before a registry records a transfer of title to uncertificated units of a security, the registry system must be able to establish that the transferor has title to such number of units of the security as is in aggregate at least equal to the number to be transferred.

(4) A registry system must maintain adequate records of all dematerialised instructions.

(5) A registry system must include an on line issue service.

(6) A registry system must be able to make correcting entries in such records as are maintained in order to comply with paragraphs (3) or (4) which are inaccurate.

(7) A registry system must comprise procedures which provide that it responds only to properly authenticated dematerialised instructions which are attributable to an intermediary.

(8) A registry system must comprise procedures which enable it to amend a register of securities kept by the share registry if necessary to correct an error and if in accordance with the rules and practices of the share registry instituted in order to comply with this regulation.

(9) A registry system must comprise procedures which—

- (a) enable intermediaries to notify the share registry of an error in or relating to a dematerialised instruction; and
- (b) ensure that, where the share registry becomes aware of an error in or relating to a dematerialised instruction, he takes appropriate corrective action.

(10) A registry shall institute and maintain such back-up facilities, including but not limited to daily back-up to disk and additional back-up to tape stored off-site, and such other procedures and measures, as are necessary to ensure the ongoing integrity, safety and accuracy of entries in every register of securities kept by the share registry.

(11) A share registry shall report to the Commission, in writing within 24 hours of the occurrence of the system problem or failure, any such problem or failure which affects or may affect the integrity, safety and accuracy of entries in any register of securities kept by the share registry.

(12) The Commission may give to a share registry such directions as the Commission considers necessary to maintain the security of his registry system or the capabilities of the system as required by this regulation.

(13) The Commission may at any time conduct a regulatory audit of a share registry system to ensure its compliance with this regulation.

Defaults and contraventions

20. (1) A company which fails to comply with any provision of regulation 3 or 12 of these Regulations and any officer of the Company who knowingly and wilfully

authorises or permits the default commits an offence and is liable on summary conviction—

- (a) in the case of an individual to a fine of \$100,000;
- (b) in the case of a company to a fine of \$300,000.

And in addition the individual or the company (as the case may be) is liable to a fine of \$500 for every day that the offence continues after the conviction.

(2) A default by a company and any officer of the company who knowingly and wilfully authorises or permits the default in complying with, or a contravention of, any provision of regulation 3 or 12 shall be actionable at the suit of a person who suffers loss as a result of the default, or contravention, or who is otherwise affected by it, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) A default by a share registry in complying with, or a contravention of, any provision of regulations 3, 4, 7, 8, 9, 10, 15, 16, 17 or 19 shall be actionable at the suit of a person who suffers loss as a result of the default or contravention, or who is otherwise affected by it, subject to the defences and other incidents applying to actions for breach of statutory duty.

(4) Any person who within three months of the opening by a share registry of a register of members pursuant to regulation 3 or the opening of a register of debt securities pursuant to regulation 4 transfers or attempts to transfer a security entered on the relevant register in respect of which there is a valid and subsisting transfer or charge of the security given by him commits an offence and is liable on summary conviction to a fine of \$100,000.

Transitional provisions

21. (1) These provisions shall, unless otherwise stated, apply to any person who—

- (a) has prior to the closing of a company's register of members pursuant to regulation 3(9) contracted to purchase from a member any shares of the company (or units thereof) and has obtained from the member a signed share transfer (in form which complies with the company's articles of association and/or byelaws) and the member's original share certificate or certificates for the shares but whose transfer has not been recorded by the company; or
- (b) has prior to the closing of a company's register of members pursuant to regulation 3(9) taken from a member of the company a charge (in written form) which subsists over the member's shares of the company (or units thereof) supported by a deposit of the member's original certificate or certificates for the shares; or
- (c) has prior to the opening of a register of debt securities pursuant to regulation 4 taken from a holder of a debt security a charge (in written form) which subsists over the security supported by a deposit of the holder's title document to the security.

(2) A person to whom these provisions apply may, within three months of the opening by the share registry of the relevant register of securities, notify the share

registry of the transfer or charge held by him, as the case may be, and deposit with the share registry the share transfer or charge document (duly stamped by the Treasury Department) and the original share certificate or certificates held by him or the document of title to the debt security as the case may.

(3) On receipt of the documents listed in paragraph (2) and subject to paragraph (5) the share registry shall enter on the relevant register of securities the transferee as holder of the shares (or units thereof) or the chargee as chargee of the shares or debt security (or units thereof) as the case may be.

(4) After making an entry pursuant to paragraph (3) the share registry shall—

- (a) in the case of a transfer of shares retain the original share transfer and the original share certificate or certificates presented to it; or
- (b) in the case of a charge of shares or securities retain the original charge document and the original share certificate or certificates or documents of title as the case may be.

(5) The share registry shall not make an entry pursuant to paragraph (3) in any of the following cases—

- (a) If the person who gave the transfer or charge is not at the time of its receipt of the documents referred to in paragraph (2) entered on the register of members as the holder of the shares transferred or charged as the case may be;
- (b) if a lien has been noted pursuant to regulation 8 in respect of the shares transferred or charged as the case may be;
- (c) if a charge has been noted in respect of the shares or debt security (or any units thereof) pursuant to regulation 9 in respect of the shares or debt security transferred or charged as the case may be;
- (d) If the share registry is prohibited by order of a court from making the entry;
- (e) If the transfer or charge is prohibited or avoided by or under an enactment;
- (f) If in the case of a transfer the shares are to be held jointly in the names of more persons than is permitted under the company's articles of association and/or byelaws.

(6) Nothing contained in this regulation shall preclude a person who has not complied with the provisions in paragraph (2) from applying to the Court for an order to have his transfer or charge entered and the Court may on such application order the entry on the register of members or the register of debt securities concerned if the person who gave the transfer or charge is entered on the register of members as holder of the shares transferred or charged or the securities charged or if any person other than a purchaser for value without notice of the transfer or charge is so registered.

(7) A company whose register of members is transferred to a share registry pursuant to regulation 3 shall notify the public of the transfer by notice (in form approved by the Commission) published in a newspaper with circulation in the

Montserrat on four consecutive weekends immediately following the transfer of the register.

(8) A company whose register of securities is transferred from one share registry to another shall notify its members or other holders of its securities at least 4 weeks prior to the transfer of the register of securities.

SCHEDULE*(Regulations 12(4))*

section 177(2)	Records of Company – duty to keep register of members and prescribed contents
section 177(7)	Location of register
section 186	Trust notices
section 190	Access to records
section 193	Restricted use of list
section 195	Transferring of shares
section 196	Restrictions on transfers
section 197	Duty to issue
section 199	Registration
section 198	Certificates
section 244	Rectification of records

**SECURITIES (FOREIGN SECURITIES
AND INTERMEDIARIES) REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

REGULATION

1. Short title
2. Interpretation

PART 2

LISTING AND TRADING FOREIGN SECURITIES

3. Approved classes
4. Exemption from certain requirements

PART 3

**LICENSING OF FOREIGN BROKER DEALERS
AND LIMITED SERVICE BROKERS**

5. Licensing requirement for foreign broker dealers and limited service brokers
6. Exemption from certain regulations

PART 4

**LICENSING REQUIREMENT FOR
FOREIGN INVESTMENT ADVISERS**

7. Licensing requirement for foreign investment advisers

PART 5

**LICENSING OF PRINCIPALS AND REPRESENTATIVES
OF FOREIGN INTERMEDIARIES**

8. Licensing requirement for principals and representatives of foreign broker dealers, limited service brokers and investment advisers
- SCHEDULE: Approved Countries**

SECURITIES (FOREIGN SECURITIES AND INTERMEDIARIES) REGULATIONS –
SECTION 175

(S.R.O. 86/2005)

Commencement

[1 November 2005]

PART 1

PRELIMINARY

Short title

1. These Regulations may be cited as the Securities (Foreign Securities and Intermediaries) Regulations

Interpretation

2. (1) For the purpose of these Regulations, “**foreign company**”, “**foreign custodian**”, “**foreign government**”, “**foreign investment adviser**”, “**foreign security**”, “**foreign securities exchange**”, “**foreign securities registry**” and “**member territory**” used in the Securities Act shall have the meaning given under that Act.

(2) In these Regulations—

“**the Act**” means the Securities Act;

“**foreign securities regulatory commission**” includes any commission, body or agency that exercises regulatory control or oversight over the securities business of a foreign broker dealer, foreign limited service broker, foreign investment adviser, foreign securities exchange or the issue of securities by a foreign company.

PART 2

LISTING AND TRADING FOREIGN SECURITIES

Approved classes

3. (1) The following classes of foreign securities may be listed and traded on a securities exchange in accordance with the securities exchange’s listing rules and procedures for foreign securities:

- (a) securities issued by a foreign company formed or incorporated in the countries specified in Schedule I;
- (b) securities issued by a foreign company formed or incorporated in any country or jurisdiction, if the securities are listed on a foreign securities exchange that is recognized in the rules of a securities

exchange that has been approved by the Commission under section 13 or 14 of the Act;

- (c) other foreign securities approved by the Commission on a case by case basis on application of the issuer of the foreign securities, a securities exchange or other interested party.

(2) Approval under subregulation (1)(c) is only approval in that particular case and does not constitute approval of the country or jurisdiction of incorporation or type of company generally.

Exemption from certain requirements

4. A foreign company whose securities are listed on a securities exchange as a secondary listing pursuant to the Securities Act and the rules of the Securities Exchange shall be exempt from the requirements of—

- (a) the Securities (Continuing Disclosure Obligations of Issuers) Regulations; and
- (b) the Securities (Collective Investment Schemes) Regulations, if the foreign company is a collective investment scheme,

on condition that it submits all documents provided to investors, who participated in the issue of securities that are being listed pursuant to regulation 3, to the Commission.

PART 3

LICENSING OF FOREIGN BROKER DEALERS AND LIMITED SERVICE BROKERS

Licensing requirement for foreign broker dealers and limited service brokers

5. (1) The Commission may grant an exemption from the requirements of Part 4 of the Act to a foreign broker dealer or limited service broker licensed and regulated by a securities regulatory commission in a foreign country acceptable to the Commission provided that it—

- (a) registers with the Commission, and
- (b) trades securities for its own account or on behalf of foreign persons.

(2) In determining whether to grant an exemption under regulation 5(1) the Commission shall, in evaluating the foreign broker dealer or limited service broker take into consideration the following—

- (a) compliance with the requirements of the foreign securities regulatory commission;
- (b) compliance with the requirements as stated in section 48(3)(d) and 51(3)(d) of the Act;
- (c) compliance with the requirements as stated in sections 48(3)(e) and 51(3)(e) of the Act; and

- (d) compliance with the requirements as stated in section 48(3)(h) and 51(3)(h) of the Act.
- (3) The Commission may require a foreign applicant for a licence as a broker dealer or limited service broker to—
 - (a) disclose to the Commission any pending or previous disciplinary action taken against the applicant by a foreign securities regulatory commission within the past three years;
 - (b) undertake, if a licence is granted by the Commission, to advise the Commission immediately should disciplinary action be taken against it by a foreign securities regulatory commission; and
 - (c) submit to the enforcement and disciplinary jurisdiction of the Commission in connection with any activity or transaction involving a person resident in a member territory or effected through the facilities of a securities exchange.

Exemption from certain regulations

6. (1) The Commission may grant an exemption from the requirements of the Securities (Accounting and Financial Statements) Regulations and Parts 3 and 4 of the Securities (Conduct of Business) Regulations to a foreign broker dealer or limited service broker licensed and regulated by a securities regulatory commission in a foreign country acceptable to the Commission.

(2) In determining whether to grant an exemption under Regulation 6(1) the Commission shall in evaluating the foreign broker dealer or limited service broker take into consideration the following—

- (a) compliance with the requirements of the foreign securities regulatory commission as to the submission of audited financial statements;
- (b) financial statements filed with the licensed securities exchange.

PART 4

LICENSING OF FOREIGN INVESTMENT ADVISERS

Licensing requirement for foreign investment advisers

7. (1) A foreign investment adviser that desires to give advice on securities or holds himself out as carrying on the business of giving advice on securities must comply with this regulation.

(2) The Commission may grant an exemption from the requirements of Part 4 of the Act to an investment adviser licensed and regulated by a securities regulatory commission in a foreign country acceptable to the Commission provided that he—

- (a) registers with the Commission, and
- (b) advises foreign persons concerning investment in securities.

(3) In determining whether to grant an exemption under regulation 7(2) the Commission shall, in evaluating the investment adviser take into consideration the following—

- (a) compliance with the requirements of the foreign securities regulatory commission;
- (b) compliance with the requirements as stated in section 54(3)(c) of the Act;
- (c) compliance with the requirements as stated in section 54(3)(d) of the Act; and
- (d) compliance with the requirements as stated in section 54(3)(g) of the Act.

(4) The Commission may require a foreign applicant for a licence as an investment adviser to—

- (a) disclose to the Commission any pending or previous disciplinary action taken against the applicant by a foreign securities regulatory commission within the past three years;
- (b) undertake, if a licence is granted by the Commission, to advise the Commission immediately should any disciplinary action be taken against it by a foreign securities regulatory commission; and
- (c) submit to the enforcement and disciplinary jurisdiction of the Commission in connection with any advice given to or activity or transaction involving a person resident in the member territory or effected through the facilities of a securities exchange.

PART 5

LICENSING PRINCIPALS AND REPRESENTATIVES OF FOREIGN INTERMEDIARIES

Licensing requirement for principals and representatives of foreign broker dealers, limited service brokers and investment advisers

8. (1) A foreign broker dealer, limited service broker or investment adviser licensed by the Commission pursuant to these Regulations must have at least one principal and one representative.

(2) A principal or representative of a foreign broker dealer, limited service broker or investment adviser licensed by the Commission pursuant to these Regulations who, conducts business or holds himself out as conducting business, within a member territory must be licensed by the Commission under sections 60 to 63 of the Act.

(3) For the purposes of subregulation (2), “**conducts business or holds himself out as conducting business**” includes but is not limited to—use of the telephone, telegraph, mail, Internet or e-mail to communicate with investors or potential investors located in a member territory, whether on a regular or sporadic basis—

- (a) visiting investors or potential investors in a member territory, whether singly or in groups, to communicate with them about an investment in securities, whether on a regular or sporadic basis;
 - (b) registration as a principal or representative with a securities exchange in connection with a foreign broker dealer or limited service broker's membership in a securities exchange;
 - (c) engaging in any other activity or combination of activities described in—
 - (i) section 47 of the Act (in the case of a foreign broker dealer or limited service broker), or
 - (ii) section 53 of the Act (in the case of a foreign investment adviser),if any part of the activity takes place in a member territory or is designed or intended to communicate with persons present in a member territory.
- (4) A person is subject to the requirements of paragraph (2) if he participates in any of the activities listed in paragraph (3) even if he is not physically present in the member territory when he participates in the activity.

SCHEDULE I

(Regulation 3)

APPROVED COUNTRIES

Australia
Canada
Finland
Iceland
Japan
New Zealand
Norway
Singapore
Sweden
Switzerland
United States of America
A member of the Caribbean Community (CARICOM)
A member of the European Union (EU) as at 1 July, 2003

**EASTERN CARIBBEAN SECURITIES
MARKET CORPORATE GOVERNANCE RULES**

ARRANGEMENT OF RULES

RULE

1. Short title

PART 1

PRELIMINARY

2. Interpretation

PART 2

PURPOSE AND APPLICATION

3. Purpose
4. Application

PART 3

BOARD OF DIRECTORS

5. Board of Directors
6. Composition of the Board
7. Responsibilities and duties of the Board of Directors
8. Orientation and training of directors
9. Board meetings and attendance
10. Conflict of interest
11. Remuneration
12. Performance evaluation of Board
13. Chairman of the Board

PART 4

MANAGEMENT

14. Role and responsibilities of management

PART 5

RELATIONSHIP WITH SHAREHOLDERS

15. Protection of shareholder rights
16. Shareholder meetings

PART 6

RISK MANAGEMENT AND INTERNAL CONTROLS

17. Risk management
18. Whistle-blowing policy

PART 7

AUDITS

19. Internal Audit Unit
20. External Auditor
21. Rotation of External Auditors
22. Audit committee

PART 8

ACCOUNTABILITY AND REPORTING

23. Disclosure

PART 9

MISCELLANEOUS

24. Code of ethics

**EASTERN CARIBBEAN SECURITIES MARKET CORPORATE
GOVERNANCE RULES— SECTION 176(B)**

(S.R.O. 79/2020)

Commencement

[11 November 2020]

Short title

1. These Rules may be cited as the Eastern Caribbean Securities Market Corporate Governance Rules.

PART 1

PRELIMINARY

Interpretation

2. In these Rules—

“**Associate**” when used to indicate relationship with a person means—

- (a) an entity of which that person beneficially owns or controls directly or indirectly, either shares or securities currently convertible into shares, and carries 10 percent or more of the voting rights;
- (b) within a partnership, the partner of the person who acts on behalf of the partnership;
- (c) a trust or estate, in which that person has significant beneficial interest or in respect of which he serves as a trustee, legal representative or in similar capacity; or
- (d) a relative of that person;

“**Board**” means the board of directors of a company;

“**Commission**” means the Eastern Caribbean Securities Regulatory Commission;

“**Conflict of interest**” means a real or apparent incompatibility between an entity’s or individual’s private interests and its or his public or fiduciary duties;

“**Control functions**” means the functions that have a responsibility independent from management to provide objective assessment, reporting, and/or assurance, which includes compliance and internal audit functions;

“**Corporate Governance**” involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders which provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance. It helps define the way authority and responsibility are allocated and how corporate decisions are made;

“**Corporate Instruments**” means any statute, letters of patent, memorandum of association, certificate of incorporation, certificate of continuance, by-laws,

regulations or other instrument by which a company is incorporated or continued or that governs or regulates the affairs of a company;

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

“**ECSM**” means the Eastern Caribbean Securities Market;

“**Executive**” refers to an employee of a company having administrative and managerial responsibility for the company, and includes the Chief Executive, Executive Director, Managing Director, and President or their equivalent;

“**Fiduciary duty**” refers to the duty of the board to decide and act on an informed and prudent basis with respect to the company;

“**Independent director**” means a non-executive director who is free of any business or other relationships that would significantly interfere with, or could reasonably be perceived to significantly interfere with, the exercise of his unfettered decision making or independent business judgment pertaining to the interests of the institution;

“**Internal control system**” refers to a set of rules governing the company’s organisational and operational structure, including reporting processes, and functions for risk management, compliance and internal audit;

“**Management**” refers to the chief executive officer and senior managers/officers of a reporting issuer;

“**Material**” means information relating to the business, operations or securities of an issuer that would reasonably be expected to significantly affect the value or market price of the issuer or a security of the issuer, or information which would be reasonably considered to be of significant importance to an investor in making an investment decision;

“**Member countries**” means the countries of the Currency Union;

“**Non-executive director**” means a director who does not participate directly in the management of the institution;

“**Public company**” means a public company as defined in the member country’s Companies Act;

“**reporting issuer**” refers to reporting issuers as described in section 97 of the Securities Act (Cap. 11.01);

“**Shareholder**” refers to a person who lawfully acquires shares in the capital of a company;

“**Stakeholder**” includes a director, employee, creditor, customer, depositor, distributor, regulatory authority, supplier, tax authority and lender.

PART 2

PURPOSE AND APPLICATION

Purpose

3. These Rules provide minimum standards on corporate governance to assist in promoting a fair, transparent and efficient securities market, while protecting shareholders' rights.

Application

4. These Rules shall apply to all public companies whose securities are listed on a securities exchange in the Currency Union and any issuer that has or is proposing to raise capital through the issuance of its own securities in the ECSM.

PART 3

BOARD OF DIRECTORS

Board of Directors

5. (1) Every company shall be led by a Board, made up of directors who are—
- (a) elected by shareholders or appointed in accordance with any applicable legislation, corporate instrument or contractual agreement; and
 - (b) suitably qualified to act as director having the skills, expertise, competence, knowledge and experience required for the effective performance of the role of a director.

(2) A director shall act in the best interest of the company, consistent with the company's corporate instruments and shall be subject to the applicable laws in the relevant member territories.

(3) Every company shall ensure there is transparency in the selection of candidates for Board membership.

Composition of the Board

6. (1) The Board must be of a size sufficient to match the scale, complexity and scope of the company's operations and must be independent of management to enable it to carry out its oversight function in an objective and effective manner.

(2) The majority of Board members shall be non-executive directors and at least one of whom must be an independent director.

(3) Where the company limits the size of its Board to a statutory minimum, two of the Board members must be completely independent of the company.

(4) Existing directors or nominee directors must immediately inform the Board of prospective appointments on and to other Boards, and any relationships or potential related party transactions that may affect their independence as a director.

(5) For the avoidance of conflict of interest, confidentiality breaches, insider dealings and to secure Board independence—

- (a) directors must not be on the Board of competing companies, or companies in the same industry;
- (b) the Board must only contain a maximum of two immediate family members as directors at any one time; and
- (c) cross memberships on the Boards of two or more companies must be avoided unless part of a commonly controlled group of companies.

Responsibilities and duties of the Board of Directors

7. (1) The responsibilities and duties of the Board shall be established in the Company's Corporate Instruments and shall be evaluated and enhanced on a periodic basis.

(2) The Board shall ensure that the company is properly managed in order to protect and enhance shareholder value and to meet the company's obligations to its employees and other stakeholders.

(3) The Directors shall—

- (a) encourage the reporting of unlawful/unethical behaviour to the relevant bodies and actively promote ethical behaviour and protection for those who report violations in good faith;
- (b) not disclose non-public information except where authorised by law;
- (c) not improperly use information acquired as directors and officers of the company;
- (d) keep confidential, information received in the course of the exercise of their duties unless the disclosure is authorised by the person providing the information, or the Board, or where disclosure is required by law;
- (e) not take improper advantage of his position as Director or use the position for personal gain or to compete with the company;
- (f) not take advantage of company property or use such property for personal gain or to compete with the company;
- (g) not allow personal interests, or the interest of any associate to conflict with the interests of the company; and
- (h) not engage in conduct likely to bring discredit upon the company.

(4) In exercising the powers of the company, the Board shall ensure the effective performance of the company by—

- (a) directing the management and conduct of the affairs of the company;
- (b) ensuring that the ethical standards of the company are maintained;
- (c) defining the company's strategic goals and ensuring that its human and financial resources are effectively deployed towards achieving these goals;

- (d) defining a framework for the delegation of its authority or duties to Management specifying matters that may be delegated and those reserved for the Board;
 - (e) formulating the company's policies on risk management, communication and information dissemination;
 - (f) overseeing the effectiveness and adequacy of internal control systems, ensuring the integrity of the company's accounting and financial reporting systems, including the independent audit;
 - (g) formulating the requisite Board procedures and rules to be followed for the scheduling and place of meetings, for the conduct of meetings and attendance of members, the term of Board appointments, and the appointment, training, remuneration and the replacement of Board members and senior executives;
 - (h) formulating plans for Board succession, and devising mechanisms for effective communication with shareholders;
 - (i) reviewing and approving financial reports; and
 - (j) ensuring compliance with applicable regulations.
- (5) Where the Board determines that certain of its powers, duties and responsibilities must be undertaken through committees, it shall ensure that each committee operates under the terms of reference approved by the Board.

(6) The Board shall—

- (a) establish a code of conduct to guide the directors and the Chief Executive Officer and other key personnel within the company; and
- (b) monitor the company's compliance with the code of conduct by consistent review of the Board's processes and the internal structure of the company to ensure that standards of accountability are met by management.

Orientation and training of directors

8. The Board shall—

- (a) establish a formal orientation programme to familiarise new directors with the company's operations, strategic plan, senior management and its business environment, and to induct them in their fiduciary duties and responsibilities; and
- (b) require the participation of all directors in appropriate periodic professional continuing education programmes to ensure that directors remain current in their skills and knowledge and with new developments in the company's business and operating environment.

Board meetings and attendance

9. (1) Board members shall attend all Board meetings whether remotely or in person.

(2) Except where the Chairman excuses an absence, attendance at Board meetings shall be mandatory for every director.

Conflict of interest

10. (1) Every company shall adopt a policy to guide the Board, executive officers, auditors and other relevant parties on conflicts of interest situations and the type of disclosures that shall be made in these situations.

(2) Every director, officer and external auditor of a company shall make a written disclosure to the Board of all conflicts which arise or may arise, and such disclosures shall specify—

- (a) the value of every contract and payments made under such contract with the company of which he is a beneficiary; and
- (b) whether he is a director or an officer of any other company that is party to a contract or any proposed contract with the company that is party to a contract or any proposed material contract with the company.

(3) Disclosures under this section shall be made annually, however directors and officers shall disclose any conflict of interest as soon as it is discovered.

Remuneration

11. (1) Except where the remuneration of a director is set out in legislation, or is subject to the company's corporate instruments or a contractual arrangement, the Board must develop a comprehensive policy on remuneration for the company directors, executives and senior management.

(2) The remuneration policy must define the criteria and mechanism for determining levels of remuneration and the frequency for review of such criteria and mechanism.

(3) The remuneration policy must specify how and to what extent the remuneration of an executive director is linked to corporate and individual performance.

Performance evaluation of Board

12. (1) The Board of every company to which these Rules apply must establish an annual performance review policy with respect to an annual evaluation of its own performance, the performance of its committees, the Chairman and individual directors.

(2) The Board may engage the services of external consultants to conduct the annual performance evaluation.

(3) Following the annual performance evaluation, the Board shall review and discuss the overall results and where necessary an improvement plan be developed and progress reviewed at the next evaluation.

(4) The Chairman shall—

- (a) provide each director with the results of his performance evaluation;
- (b) personally discuss such results with each director.

Chairman of the Board

13. The Chairman of the Board plays a critical role in the proper functioning of the Board and shall—

- (a) lead the Board and be ultimately responsible for its effective overall functioning;
- (b) ensure that Board decisions are taken on a sound and well-informed basis and shall encourage and promote critical discussions and ensure that there is freedom of expression and respect for varying views within the decision making process;
- (c) dedicate adequate time for the effective performance of his/her responsibilities.

PART 4

MANAGEMENT

Role and responsibilities of management

14. (1) The primary role of management is to manage the company in a manner consistent with the business strategy, risk appetite, and other policies approved by the Board. The Board shall provide direction and oversight of senior management. Senior management consists of a core group of individuals responsible for the sound and prudent day-to-day management of the company.

(2) An Executive shall—

- (a) head the management team and shall be charged with the overall responsibility for the management team and all employees and the operations of the business;
- (b) in the performance of his role foster a business culture that is a true representation of the company's own culture, values and norms and of the Board's standards;
- (c) have the requisite experience and competence for the successful performance of his role and responsibilities;
- (d) shall not be appointed as Chairman of the Board.

(3) Members of the management team shall—

- (a) have the necessary experience, competencies and integrity to manage the business and people under their supervision;
- (b) establish a management structure that promotes accountability and transparency throughout the company;
- (c) be consistent with the direction given by the Board and shall implement business strategies to achieve business goals.

(4) Management shall take measures to ensure company compliance with applicable laws regulations and internal policies.

PART 5

RELATIONSHIP WITH SHAREHOLDERS

Protection of shareholder rights

15. The Board shall ensure that—

- (a) the statutory and general rights of shareholders are protected at all times;
- (b) all shareholders are treated equitably;
- (c) minority shareholders are treated fairly at all times and are sufficiently protected from abusive actions of majority shareholders; and
- (d) the company promptly and securely provides shareholders with documentary evidence of ownership interest in the company, including share certificates, dividend warrants and related instruments;
- (e) that all shareholders have access to the company's financials as per the applicable legislation and any other pertinent information;
- (f) shareholders be informed that they may vote in person or by proxy.

Shareholder meetings

16. The Board shall establish and implement mechanisms and procedures for the scheduling of annual general meetings with shareholders—

- (a) the procedures shall address the time, place and date of meetings;
- (b) it shall ensure that shareholders—
 - (i) have access to all information necessary in preparation for the meetings; these include the notices and agendas;
 - (ii) have secure methods of ownership registration;
 - (iii) can freely convey or transfer shares subject to applicable law;
 - (iv) obtain relevant and timely information on the company on a regular basis, subject to any laws or principles of confidentiality;
 - (v) participate and vote in general meetings of shareholders; and
 - (vi) elect and remove members of the Board.

PART 6

RISK MANAGEMENT AND INTERNAL CONTROLS

Risk management

17. (1) The Board shall determine the nature and extent of the risks which may have a significant effect on the company and ensure that thorough enterprise-wide risk assessment, which covers all aspects of the company's business is performed on an annual basis as determined by the Board.

(2) The Board shall oversee the establishment of a management framework that defines the company's risk policy, risk appetite and risk limits.

(3) The management team is accountable to the Board and they shall establish a framework for implementing and monitoring the process of risk management, and integrating it into the day-to-day activities of the company.

Whistle-blowing policy

18. The Board shall implement whistle-blowing policies and procedures and these shall be communicated to employees and stakeholders.

PART 7

AUDITS

Internal Audit Unit

19. The Board shall ensure that the company has an effective risk-based internal audit process, the parameters of which must be consistent with the International Standard for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors.

External Auditor

20. Every company to which these Rules apply shall appoint, during its annual meeting of shareholders, an external auditor who shall hold office until the next annual meeting of shareholders, and whose remuneration shall be determined by the Board.

Rotation of External Auditors

21. The Board shall, in accordance with applicable legislation, determine whether audit firms or the partners within an audit firm should be rotated and, in writing, state the reasons for its determination.

Audit committee

22. Every company to which these Rules apply shall establish an audit committee whose responsibilities shall include—

- (a) establishing an internal audit unit and ensuring that there are other means of obtaining sufficient assurance of regular review or appraisal of the system of internal control in the company;
- (b) oversight of the company's internal audit unit and the role of external auditor;
- (c) overseeing management's procedure for identifying significant fraud risks across the company and ensuring that adequate prevention, detection and reporting mechanisms are in place;
- (d) ensuring the implementation of adequate whistle-blower procedures and periodically reviewing such procedures;

- (e) overseeing senior management's activities to ensure that the organisation is in compliance with all applicable laws, regulations, guidelines and supervisory requirements, accepted business practices and ethical standards;
- (f) having unfettered access to management; and
- (g) having access to auditors, external and internal, without management present and have the right to seek explanations and additional information from management and auditors where required.

PART 8

ACCOUNTABILITY AND REPORTING

Disclosure

23. The Board shall ensure that timely and accurate disclosure as per any applicable policies or legislation, is made on matters regarding the company, including the financial position, performance, ownership and governance of the company, consistent with the applicable legislation.

PART 9

MISCELLANEOUS

Code of ethics

24. (1) Each company shall implement a Code of Ethics that covers the Board, management, employees and representatives.

(2) The Code of Ethics should cover a broad scope and be in line with applicable laws.

(3) All steps must be taken to ensure such Code is adhered to in full.