

## BILL

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### THE SECURITIES AND EXCHANGE COMMISSION ACT, 2017

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No.



2017

**Sierra Leone**

**A BILL ENTITLED**

**The Securities and Exchange Commission Act, 2017.**

Short title.

**Being an Act to provide for the establishment of the Securities and Exchange Commission, to regulate the operations, standards of practice and business conduct of persons in the securities sector and to provide for other related matters.**

[ ] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

## PART I – PRELIMINARY

Interpretation. 1. In this Act, unless the context otherwise requires –

"advertisement" means any form of communication made to any person which contains or refers to an invitation or inducement to subscribe for or purchase any form of investment whether the investment constitutes a particular securities which are offered for subscription or purchase or relates generally to investment in some form of securities but does not include-

- (a) a registered prospectus;
- (b) a statement or report made for the purposes of any meeting of shareholders or members of the issuer or the report of the proceedings of the issuer; or
- (c) a notification statement or report made by or on behalf of an issuer relating to the affairs of the issuer made to the Commission or stock exchange for compliance with sections 106 or 508 of the Companies Act, or any listing rules of a stock exchange;

"agent" in relation to a broker or dealer includes a person who is or has at any time been a banker of the broker or dealer;

"arbitrage" means profiting from differences in the price of the same security traded in two or more markets;

"associated person" means any natural person who is associated as a partner, officer, or employee, or occupying a similar status or performing similar functions, in any capacity which involves -

(a) the solicitation or acceptance of customers' or option customers' orders (other than in a clerical capacity); or

(b) the supervision of any person or persons so engaged;

"auditor" means a company auditor qualified as such under the Companies Act, 2009 (Act No. 5 of 2009);

"authorised registrar" means a company registrar engaged in the business of keeping registers of members, shareholders, debenture holders or unit holders for public companies or collective investment schemes;

"beneficial owner" means the natural person who, alone or with associates is the ultimate owner or controller of a legal person or arrangement or if there is no legal person or arrangement, the person on whose behalf a transaction is conducted;

"book" includes any register, document or other record of information and any account or accounting record however compiled, recorded or stored, whether in writing or printed form or by electronic process or otherwise;

"broker" means a person carrying on the business of buying and selling securities as an agent;

"Central Bank" means the Bank of Sierra Leone established under the Bank of Sierra Leone Act, 2011 (Act No. 15 of 2011);

"Chairman" means the chairman of the Commission;

"close business associate" in relation to any person means any person who has had a close working relationship in business with that person during the preceding five years whether as business partner, co-director, co-trustee on a board of directors, trustees or employee or employer in an executive capacity;

"close relative" in relation to any person means-

- (a) any spouse, parent, child, (including an adopted child), brother or sister of that person;
- (b) any parent, child, ( including an adopted child), brother or sister of a spouse of that person;
- (c) a nominee or trustee of any person referred to in paragraph (a) or (b);

"closely held" in relation to a public company means a company, the securities of which are held by persons who are employees of the company or nominees of such persons;

"Commission" means the Securities and Stock Exchange Commission established by section 2;

"Corporate Affairs" means the Corporate Affairs Commission established under section 2 of the Companies Act, 2009 (Act No.5 of 2009);

"council of the stock exchange" means the person for the time being in whom the management of the stock exchange is vested;

"Court" means the High Court;

"custodian" means a person entrusted with the safekeeping of securities on behalf of security holders and performing related services for the holders;

"dealer" means a person who carries out a business of dealing in securities on his own account or as a broker but not solely as an underwriter, whether carrying on any other business or not;

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

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

"debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge in the assets of the company or not;

"debt prospectus" means a prospectus in relation to an issue of debt securities namely debenture, loan stock, bonds or notes issued by a body corporate or by a government;

"director" means a person by whatever name called duly appointed by a company to direct and manage the business of the company and includes a person held out by the company as a director;

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

"financial journalist" means a person who gives advice concerning securities or prepares analysis or reports concerning securities for publication in a legally registered newspaper, periodical or electronic media;

"foreign regulatory authority" means any person or body outside Sierra Leone exercising regulatory functions in relation to securities under a securities law corresponding to the functions of the Commission;

"fund manager" means a person who pursuant to a contract or arrangement with a client, undertakes on behalf of a client (whether on a discretionary authority granted by a client or otherwise) the management of a portfolio of securities for the purpose of investment;

"interim stock exchange" means a trading facility established under section 81;

"investment adviser" means a person who -

- (a) carries out a business of advising others concerning securities; or
- (b) as part of a regular business, issues or publishes analysis of reports concerning securities but does not include a person who is the proprietor of a newspaper where -
  - (i) in so far as the newspaper is distributed generally to the public, it is distributed only to subscribers and purchasers of the newspaper for value;
  - (ii) the advice is given or the analysis or report is issued or published through that newspaper;

(iii) the person receives no commission or other consideration for giving advice or for issuing or publishing the analysis or reports; or

(iv) the advice is given and the analysis and reports are issued or published solely as incidental to the conduct of that person's business as a newspaper proprietor;

"issuer" means a company, other body corporate, government or other entity that has issued securities to the public in which members of the public continue to hold securities;

"key person" means any current or former controller, beneficial owner, director, manager, employee or associate of a registered person;

"licensed person" means a person licensed under this Act;

"Minister" means the minister responsible for finance and "ministry" shall be construed accordingly;

"offer" includes an invitation to make an offer;

"private placement" means organising by the issuer or promoter of the offering of securities for subscription either directly or through a dealer or other licensed person, inviting persons who are professional investors or close business associates of the issuer to subscribe for the securities or in the case of professional investors place the securities with selected clients;

"professional investor" means a person whose ordinary course or regular activity involves the buying and selling of securities as principal including an underwriter, a bank and an insurance company, a fund manager, a dealer, a dealer's representative, an investment adviser or an investment adviser's representative acting as principal, subject to any exception that may from time to time be prescribed by the Commission;

"publicly held" in relation to the holding of securities means the holding of securities of a company that have been the subject of an offer to the public and does not include-

- (a) the holding of securities in a private company; or
- (b) the holding of securities in a public company, all the securities of which by reason of takeover or other acquisition or for some other reason have become closely held;

"regulated person" means any person who has been granted a licence under this Act or any Act regulating collective investment schemes or an approved stock exchange or any person associated with the licensee or the approved stock exchange;

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

"securities " means -

- (a) shares or debentures;
- (b) bonds or other loan instruments within or outside the jurisdiction;
- (c) bonds or other loan instruments of a body corporate or unincorporated association established under an Act;
- (d) rights or interests (whether described as units or otherwise) under any unit trust scheme;
- (e) any certificate of interest or participation in any profit sharing agreement or in any mineral royalty or lease;
- (f) any future contract;
- (g) options and warrants on shares, depository receipts, derivatives and options on-derivatives;
- (h) other instruments as the Minister may by notice prescribe in the *Gazette*;
- (i) subject to paragraph (h) securities does not include-
  - (i) bill of exchange;
  - (ii) promissory note;
  - (iii) letter of credit;
  - (iv) acknowledgement of indebtedness issued in the ordinary course of business for goods and services supplied;

- (v) policy insurance; and
- (vi) deposit certificate, passbook or other similar document issued in connection with a deposit or current account at a bank;

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

"stock broker" means a person who carries on a business of dealing in securities on a stock market;

"stock exchange" means a body corporate approved by the Commission to operate a stock market under section 80;

"stock market" means a market, exchange or other place at which or a facility by means of which securities are regularly offered for sale, purchase or exchange;

"substantial shareholder" means a shareholder entitled to exercise or control the exercise of 15 percent or more of the voting power at general meetings of the company or one who is in a position to control the composition of a majority of the board of directors of a company;

"trust account" means a trust account opened and maintained under section 65;

"trustee" in relation to a collective investment scheme constituted in Sierra Leone means the person holding title to the property of a unit trust scheme on trust;

"underwriter" means a person who purchases or distributes any issue or offer of securities for immediate or prompt distribution by or through that person or undertakes to do so;

"unit" means any rights or interests of the participants in a unit trust scheme;

"unit trust scheme" means a collective investment scheme under which the property is held in trust for the participants.

### PART II—ESTABLISHMENT OF THE SECURITIES AND EXCHANGE COMMISSION

2. (1) There is hereby established a body to be known as the Securities and Exchange Commission.

Establishment of Securities and Exchange Commission.

(2) The Commission shall be a body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, and of suing and being sued in its corporate name and, subject to this Act, of performing all such acts as bodies corporate may by law perform.

(3) The Commission shall have a common seal, the use of which shall be authenticated by the signatures of-

- (a) the Chairman or other member of the Commission authorised either generally or specially by the Commission in that behalf; and
- (b) the Director-General or some other person authorised by the Commission in that behalf.

3. (1) The Commission shall consist of a Chairman who shall be a person with considerable knowledge and proven experience in the securities sector and the following other members

Composition of Commission.

- (a) the Financial Secretary, Ministry of Finance;
- (b) the Governor, Bank of Sierra Leone;
- (c) the Chairman, Corporate Affairs Commission;

- (d) the President, Sierra Leone Chamber of Commerce and Industry;
- (e) the President, Sierra Leone Bar Association;
- (f) the President, Sierra Leone Bankers Association; and
- (g) the Director, Institute of Chartered Accountants of Sierra Leone.

(2) The Chairman shall be appointed by the President subject to the approval of Parliament.

Tenure of members.

4. (1) The Chairman shall hold office for a period of 4 years and shall be eligible for re-appointment for another term of 4 years.

(2) The Chairman may at any time, by notice in writing to the President, resign his office.

(3) A person shall cease to be a member of the Board on any of the following grounds-

- (a) for his inability to perform the functions of his office by reason of infirmity of mind or body;
- (b) for proven misconduct;
- (c) if he becomes bankrupt or insolvent;
- (d) if he is convicted and sentenced for an offence involving fraud or dishonesty;
- (e) if he fails to attend three consecutive meetings of the Commission without reasonable cause; or
- (f) if he resigns his office by written notice to the Minister.

5. (1) The Commission shall meet for the dispatch of its business at least once every three months at such times and places as the Chairman may determine. Meetings of Commission.

(2) The Chairman shall preside at every meeting of the Commission, if present, and in his absence, the members present shall appoint a member from among themselves to preside at that meeting.

(3) A minimum of not less than one-third of members may, by notice in writing signed by them, request the Chairman to summon a special meeting of the Commission for such purposes as may be stated in the notice.

(4) The Chairman or, in his absence, the member appointed to act on his behalf shall summon a special meeting within five days of his receipt of the notice referred to in subsection (3).

(5) The quorum at any meeting of the Commission shall be 5.

(6) The Chairman or other person presiding shall have a casting vote where there is an equality of votes.

(7) Any proposal circulated among all members and agreed to in writing by a two-thirds majority of all members shall be of the same force or effect as a decision made at a duly constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission:

Provided that, if a member requires that such proposal be placed before a meeting of the Commission, this subsection shall not apply to such proposal.

(8) The Commission may co-opt any person to attend and participate in its deliberations on any matter but such person shall not vote on any issue for decision by the Commission.

(9) No act or proceeding shall be invalidated by a vacancy among its members or a defect in the appointment or qualification of a member.

(10) The Commission shall cause minutes of all its meetings to be taken and signed by the Chairman and kept in proper form.

(11) Subject to this Act, the Commission shall regulate its own procedure.

Disclosure of interest.

6. (1) A member who has any personal interest, whether direct or indirect in any matter being considered or to be considered by the Commission, shall disclose the nature of his interest to the Commission and the disclosure shall be recorded in the minutes of the Commission and such member shall not take part in any deliberation or decision of the Commission relating to that matter.

(2) A member who contravenes subsection (1) shall be guilty of misconduct and shall be liable to be removed from the Commission.

Immunity of members etc.

7. (1) No action or other proceedings shall lie or be instituted against any member of the Board or member of a committee of the Commission for or in respect of any act or thing done or omitted to be done in good faith in the exercise of his functions under this Act.

(2) No member shall be personally liable for any debt or obligation of the Commission.

Committees of Commission

8. (1) The Commission may, for the discharge of its functions, appoint committees comprising members or non-members or both.

(2) Without prejudice to the generality of subsection (1), the Commission shall appoint a Complaints Committee consisting of not less than five members.

(3) A committee shall submit a report of its proceedings to the Commission at such time as the Commission may determine.

9. The Chairman, other members and any person co-opted by the Commission under subsection (8) of section 5 shall be paid such remuneration, fees and allowances approved by the Minister and shall be reimbursed by the Commission for expenses incurred in connection with the discharge of their functions as the Commission may, with the approval of the Minister, determine. Remuneration of members.

10. (1) Where the Chairman or any member dies, resigns, is removed from office or is absent for a continuous period exceeding twelve months or is by reason of illness unable to perform the functions of his office for a continuous period of three months- Filling of vacancies.

(a) the members shall, as the case may be, elect one of their number to act as Chairman until such time as the Chairman resumes his office or another is appointed in his stead; and

(b) in the case of the member, the Chairman shall arrange, subject to this Act, to have another person appointed to the Commission.

(2) Where a person is appointed as Chairman or appointed as a member to fill a vacancy, he shall hold office for the remainder of the term of the previous Chairman or member, as the case may be, and shall, subject to this Act, be eligible for re-appointment.

### PART III—FUNCTIONS OF THE COMMISSION AND OTHER RELATED PROVISIONS

11. (1) The object for which the Commission is established is to regulate securities activities to ensure proper standards of conduct and acceptable practices in the securities business. Functions of Commission.

(2) Without prejudice to the generality of subsection (1) the Commission shall perform the following functions-

(a) register, licence and regulate securities dealers;

- (b) formulate statements of principle and codes of conduct for the securities industry;
- (c) monitor the solvency of licence holders and protect the interest of customers;
- (d) supervise and regulate takeover, merger and acquisition activities relating to companies incorporated in or outside Sierra Leone;
- (e) hear and determine complaints relating to securities activities;
- (f) approve prospectus and other offer documents relating to securities that are or are proposed to be listed or traded on an approved stock exchange;
- (g) regulate and oversee the issue and subsequent trading of securities in primary markets and the trading of any securities in secondary markets;
- (h) prescribe rules or guidelines on corporate governance of a company or issuer whose securities have been issued to the public or any section of the public;
- (i) create the necessary atmosphere for the orderly growth and development of the capital market;
- (j) enter into agreements with other regulatory authorities within or outside Sierra Leone for mutual cooperation and assistance; and
- (k) undertake activities necessary or expedient for giving full effect to this Act.

12. (1) The Commission may issue statements of principle on the conduct and financial standing expected of licensed persons under this Act or any Act regulating collective investment schemes. Statement of principle.
- (2) The conduct referred to in subsection (1) may include compliance with a code or standard.
- (3) The statement of principle referred to in subsection (1) shall have effect as if included as a condition of a licence or approval of the kind affected by the statement of principle.
- (4) Failure to comply with a statement of principle under this Act shall be a ground for disciplinary action or exercising powers of intervention but shall not give rise to any right of action by investors or other affected party.
- (5) The disciplinary action referred to in subsection (4) includes revocation or suspension of a licence as stipulated under section 39.
- (6) Where a statement of principle relates to compliance with a code or standard issued by another person, the statement of principle may provide-
- (a) that failure to comply with the code or standard shall be a ground for disciplinary action or exercising powers of intervention; and
  - (b) that no action shall be taken or any power exercised unless the person who issued the code or standard in question requested the action.
- (7) The Commission shall exercise its powers in a manner that is appropriate to secure compliance with statements of principle under this section.

Modification or waiver of statement of principle.

13. (1) The Commission may on the application of any person-
- (a) modify a statement of principle issued under section 12 to adapt it to the applicant's circumstances or to any particular kind of business carried out by him; or
  - (b) exempt the applicant from compliance with any statement of principle, generally or in relation to any particular kind of business carried out by him.
- (2) The powers conferred by this section shall not be exercised unless it appears to the Commission that-
- (a) compliance with the statement of principle in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors; and
  - (b) the exercise of the powers will not result in any undue risk to investors.
- (3) The powers conferred by this section may be exercised unconditionally or subject to conditions.

Codes of practice.

14. (1) The Commission may issue codes of practice with respect to any matter dealt with by statements of principle issued under section 12 or Regulations made under this Act.
- (2) In determining whether a person has failed to comply with a statement of principle-
- (a) the failure by him to comply with any relevant provision of a code of practice may be relied upon as tending to establish failure to comply with the statement of principle; and

- (b) compliance by him with the relevant provisions of a code of practice may be relied upon as tending to negate any failure.

(3) A contravention of a code of practice regarding a matter dealt with by rules or regulations shall not of itself give rise to any liability or invalidate any transaction but in determining whether a person's conduct is a contravention of a rule or regulation-

- (a) contravention by him of any relevant provision of a code of practice may be relied on as tending to establish liability; and
- (b) compliance by him with the relevant provisions of a code of practice may be relied on as tending to negate liability.

15. The Commission may from time to time issue guidelines for the purpose of providing instructions to - Guidelines.

- (a) licensees on the nature of their obligations under this Act and the procedures to be observed for compliance with this Act and of best practice in performance of transactions, disclosure, record keeping, maintaining of accounts and reporting to the Commission; and
- (b) investors for the operation of securities markets and the nature of transactions.

16. Subject to section 116 the Commission may publish information or bulletins and reports or arrange for the publication of information or the issue of bulletins or reports to the market in any form and manner as it considers appropriate for - Publication of in-formation.

- (a) the operation of this Act or any Act regulating collective investment scheme or any Act for whose administration the Commission is responsible including the rights of investors, the duties of licensees and the steps to be taken for enforcing rights or complying with duties;
- (b) any matter relating to the functions of licensees or any Act regulating collective investment scheme or any Act for whose administration the Commission is responsible;
- (c) any other matter which appears to it to be desirable to publish or provide information or give warning for the protection of investors or any class of investors.

#### PART IV- ADMINISTRATIVE PROVISIONS

Appointment of Director-General.

17. (1) The Commission shall have a Director-General who shall be appointed by the President on the advice of the Minister and subject to the approval of Parliament.
- (2) The Director-General shall be a person with-
- (a) formal qualification in any profession relevant or appropriate to the functions of the Commission; and
  - (b) proven ability in public administration and management.
- (3) The Director-General shall hold office on such terms and conditions as shall be specified in his letter of appointment.
- (4) Subject to general directives by the Commissioners, the Director-General shall be responsible for the day to day administration of the Commission.

18. (1) The Commission shall have, in addition to the Director-General a secretariat consisting of a Secretary, Finance Officer, Administrative Officer and such other additional technical and administrative staff, as may be required for the efficient performance of the functions of the Commission. Other staff of Commission.
- (2) The staff of the secretariat shall be appointed by the Commission subject to such terms and conditions as the Commission shall determine
19. Public officers may at the instance of the Commission be seconded or otherwise render assistance to the Commission. Secondment of public officers.
20. No officer or employee of the Commission or any person acting on the directions of an officer or employee of the Commission shall be liable in respect of any matter or thing done by him in good faith under this Act. Protection of officers.
21. The Minister may in the interest of the public give directions of a general nature regarding matters of policy to the Commission in the performance of its functions. Ministerial direction.
22. The Commission may engage the services of consultants and experts as it considers necessary for its proper and efficient performance. Consultants and experts.

#### PART V-FINANCIAL PROVISIONS

23. (1) The activities of the Commission shall be financed by funds consisting of - Funds of Commission.
- (a) all moneys appropriated from time to time by Parliament for the purposes of the Commission; and
  - (b) any moneys given to the Commission by way of gifts, endowments, bequests, grants or other contributions by persons and organisations for the purposes of the Commission;

(2) The funds of the Commission shall be applied only for the purposes of the approved budget of the Commission.

Accounts and  
Audit of  
Commission.

24. (1) The Commission shall keep proper books of account and other records in relation to the activities, property and finances of the Commission in a form approved by the Auditor-General, and shall prepare in respect of each financial year of the Commission, a financial statement in accordance with International Financial Reporting Standards which shall include-

- (a) balance sheet accounts;
- (b) income and expenditure accounts; and
- (c) source and application of funds

(2) The accounts of the Commission kept under subsection (1) shall, not later than two months after the end of each financial year, be audited by the Auditor-General or an auditor appointed by him.

(3) For the purposes of subsection (2), the Auditor-General or the auditor appointed by him shall be entitled to have access to all books of account, vouchers and other financial records of the Commission and to require such information and explanation as he may think fit.

(4) The Commission shall provide the Auditor-General or the auditor appointed by him with all necessary and appropriate facilities for the examination of the accounts and records of the Commission.

(5) The Auditor-General or the auditor appointed by him shall submit to the Commission a report on the audited accounts and the financial statements referred to in subsection (1) and shall, in the report draw attention to -

- (a) any irregularities in the accounts;

(b) any matters that are likely to adversely affect the operations of the Commission; and

(c) any other matter which, in his opinion, ought to be brought to the notice of the Commission.

25. The financial year of the Commission shall be the same as the financial year of the Government. Financial year  
of  
Commission.

26. (1) The Commission shall, within three months after the end of the financial year, submit to the Minister, a report on the performance of its functions during that year and on its policies and programmes. Annual  
report.

(2) The annual report shall include the accounts and annual financial statement prepared under section 24 and the report of the audit.

(3) The Minister shall lay copies of the annual report before Parliament within two months after he has received the report.

#### PART VI—LICENSING PROVISIONS

27. (1) Subject to subsection (2), no person shall act in any of the following capacities or hold himself out as doing so unless the person is a holder of a licence issued under this Act- Licence  
require-  
ments.

- (a) a dealer;
- (b) a dealer's representative;
- (c) a broker;
- (d) a broker's representative;
- (e) an investment adviser;

- (f) an investment representative;
- (g) a fund manager;
- (h) a fund manager's representative;
- (i) an authorised registrar;
- (j) a custodian;
- (k) a rating agency;
- (l) an operator of a clearing and settlement facility;
- (m) an underwriter; or
- (n) other capacities relating to securities as the Commission may from time to time prescribe.

## (2) Notwithstanding subsection (1)-

- (a) a licensed dealer or licensed fund manager may provide investment advice subject to conditions or restrictions imposed on the licence;
- (b) a bank which is authorised by the Commission may subject to conditions or restrictions prescribed by the Commission, enter into contracts and engage in transactions to underwrite any issue or offer of securities without holding a dealer's licence or underwriter's licence;
- (c) a financial institution or other institution approved by the Commission may act as a custodian; and

- (d) any other person may carry out other services or functions in relation to securities as specified in Regulations made under this Act, subject to conditions or restrictions specified in the Regulations.

(3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine of not less than Le 25,000,000.00 or to imprisonment, for a term not less than 5 years.

28. (1) An applicant who wishes to apply for a licence under this Act shall submit an application in the prescribed form to the Commission accompanied by the prescribed fee. Application for licence.

(2) The Commission may require an applicant to supply it with further information as it considers necessary in relation to the application.

29. (1) A licensee who wishes to renew his licence shall submit an application in the prescribed form to the Commission accompanied by the prescribed fee not later than three months before the expiration of the licence. Renewal of licence.

(2) The Commission may require an applicant to supply it with information in relation to the application as it considers necessary.

30. The Commission shall not refuse to grant or renew a licence unless it gives the applicant or licensee reasons in writing for the refusal and an opportunity to be heard. Opportunity to be heard.

31. (1) Where the Commission rejects an application for a licence or the renewal of a licence, or where the applicant withdraws his application, the prescribed fee shall not be refunded to the applicant. Prescribed fee not refundable.

Restriction on grant of Licence.

32. (1) A licence to act as -
- (a) dealer;
  - (b) broker;
  - (c) fund manager;
  - (d) custodian;
  - (e) rating agency;
  - (f) operator of a clearing and settlement facility; or
  - (g) (an) underwriter.

shall only be granted to a body corporate.

(2) A licence to act as a representative shall only be granted to an individual.

(3) The Commission shall only issue a licence if the applicant meets the minimum financial requirements, the educational qualification and experience prescribed for that licence stipulated under regulations made under this Act.

Refusal of licence.

33. Subject to this Part and Regulations made under this Act the Commission shall refuse to grant or renew a licence if-

- (a) in the case of a natural person-
  - (i) subsection (1) of section 32 applies;
  - (ii) the applicant has been adjudged bankrupt;
  - (iii) the applicant has been convicted either within Sierra Leone or elsewhere of an offence involving fraud or dishonesty

punishable on conviction with imprisonment for a term of three months or more or has been convicted of an offence under the Anti-Money Laundering and Combating of Financing of Terrorism Act, 2012 (Act No. 2 of 2012);

(iv) the Commission is not satisfied with the educational qualifications or experience of the applicant having regard to the nature of the duties of a holder of the relevant licence;

(v) the Commission has reason to believe that the applicant is not of good reputation or character; or

(vi) the Commission has reason to believe that the applicant will not perform the duties of a holder of the relevant licence efficiently, honestly and fairly.

(b) in the case of a body corporate -

(i) the body corporate is in the course of being wound up under the Companies Act;

(ii) the body corporate is one in respect of which a receiver or a receiver and manager, has been appointed under the Companies Act;

(iii) the body corporate has, whether within or outside Sierra Leone entered into a compromise or scheme of arrangement with its creditors who are still in operation;

- (iv) the Commission is not satisfied with the educational qualifications or experience of the officers of the applicant who are to perform duties in connection with the licence; or
- (v) the Commission has reason to believe that the applicant will not perform the duties of a holder of the licence efficiently, honestly and fairly

Conditions or restrictions in licence.

34. (1) The Commission may grant or renew a licence subject to conditions or restrictions as it thinks fit and the Commission may at any time vary any condition or restriction in relation to the licence by written notice to the licence holder.

(2) Without prejudice to the generality of subsection (1), the Commission may in granting or renewing an investment adviser's licence, impose a condition or restriction as to the class of business that the investment adviser may carry out including a condition or restriction that he shall carry out the class of business of -

- (a) advising others concerning securities;
- (b) issuing or promulgating analysis in reports concerning securities; or
- (c) a combination of paragraphs (a) and (b).

(3) Without prejudice to the generality of subsection (1), the Commission may in granting or renewing a fund manager's licence, impose a condition or restriction as to the class of business that the fund manager may carry out including a condition or restriction that he shall carry on a class of business involving the management of a portfolio of securities on behalf of clients for investment purposes.

(4) The Commission may by written notice to a licence holder suspend, cancel, restrict or impose terms and conditions on the right of the licence holder to-

- (a) call at any residence; or
- (b) telephone or communicate electronically with any residence in Sierra Leone for the purposes of dealing in securities.

(5) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le 20,000,000.00.

(6) In this section "residence" includes any building or part of a building where the occupant resides either permanently or temporarily.

35. (1) The Commission shall not grant a dealer's or a broker's licence unless the applicant has lodged with the Commission a deposit in such amount as the Commission may prescribe at the time of the application. Deposits to be lodged.

(2) A deposit referred to under subsection (1) shall be in cash or in such other form as the Commission may direct.

(3) All amounts paid under this section shall be deposited in an account at a bank approved by the Commission.

(4) A deposit lodged under subsection (1) shall be applied by the Commission subject to and in accordance with Regulations made under this Act.

36. (1) Subject to subsection 3 of section 32 and Regulations made under this Act, the Commission shall grant or renew a representative's licence if after consideration of the application it considers that the applicant will perform the duties efficiently, honestly and fairly. Grant of Representative's licence.

37. The holder of any licence referred to in subsection (1) of section 32 shall not carry out its licenced activity when it ceases to have in its employment or service at least one person who holds a representative's licence. Cessation of activity on loss of Representative's licence.

Power of Commission to enquire into securities transactions

38. (1) In deciding whether a person should hold a licence under this Act, the Commission may enquire into any transactions involving the purchase or sale of securities entered into by that person, whether directly or indirectly during any period of 12 months preceding the application for the licence or renewal of the licence to ascertain if that person has in such transactions or series of transactions used dishonest, unfair or unethical methods or trading practices, whether or not such method or trading practices constitute an offence under this Act.

(2) The Commission may require the person referred to under subsection (1) or his representative to submit detailed information of all or any transactions involving the purchase or sale of securities, whether such transactions were completed during the relevant period before or after the commencement of this Act, in such form and within such time as it may specify by notice in writing.

(3) Any person who, without reasonable excuse, fails or refuses to submit information to the Commission within the time specified in the notice referred to in subsection (2), or who gives false or misleading information shall, in addition to any other penalty that may be imposed under this Act, be liable in the case of an application for renewal of a licence, to have his licence revoked under section 39 and in the case of a first application for a licence to have the application refused.

Revocation of licence.

39. (1) A licence shall be deemed to be revoked in the case of-

- (a) an individual if he dies; or
- (b) a body corporate if it is wound up.

(2) The Commission may revoke a licence-

- (a) in the case of a licensed individual if -
  - (i) a levy of execution in respect of the individual has not been satisfied;

- (ii) he ceases to carry out the business for which he was licenced;
- (iii) he has been adjudged bankrupt in any jurisdiction;
- (iv) in the case of a representative, the licence of the dealer, broker, investment adviser, fund manager, custodian, rating agency, authorised registrar or underwriter in relation to whom the licence was granted is revoked;
- (v) the Commission has reason to believe that the licensed person is not a fit and proper person or has not performed his duties efficiently, honestly or fairly;
- (vi) he is convicted of an offence involving fraud or dishonesty punishable by imprisonment; or
- (vii) if the licensee contravenes or fails to comply with any condition or restriction applicable to a licence under this Act.

(b) in the case of a body corporate if -

- (i) it is being or will be wound up;
- (ii) a levy of execution in respect of the body corporate has not been satisfied;
- (iii) a receiver or a receiver and manager, have been appointed whether by a court or creditors in respect of its property;
- (iv) it has entered into any composition or arrangement with its creditors;

- (v) it ceases to carry out the business for which it was licensed;
- (vi) the Commission has reason to believe that the licensed body or any of its directors or employees has not performed its or his duties efficiently, honestly or fairly; or
- (vii) if the licensee contravenes or fails to comply with any conditions or restrictions applicable to a licence under this Act.

(3) Where subsection (2) applies, the Commission may instead of revoking a licence, impose conditions or restrictions upon the licence or suspend the licence for a specific period and where a licence is suspended, the Commission may revoke the suspension at any time.

(4) The Commission shall not revoke a licence under subsection (2) or impose conditions or restrictions or suspend the licence as stated under subsection (3), unless it gives the licensee an opportunity to be heard.

(5) A person whose licence is revoked or suspended shall be deemed not to be licensed from the date that the Commission revokes or suspends the licence.

(6) A revocation or suspension of a licence shall not operate so as to -

- (a) avoid or affect any agreement, transaction or arrangement relating to the trading in securities entered into by the person, whether the agreement, transaction or arrangement was entered into before the revocation or suspension of the licence; or

- (b) affect any right, obligation or liability arising under any agreement, transaction or arrangement.

40. (1) Subject to subsection (2), a licence issued under this Act shall expire one year from the date of issue. Period of licence.

(2) A licence that has been renewed in accordance with this Act shall continue to be in force for a period of one year from the date of the renewal subject to section 39.

41. Where- Notification of change of particulars.
- (a) the holder of a licence ceases to carry out the business to which the licence relates; or
  - (b) a change occurs in any of the particulars required under section 42 to be entered in the register of licence holders in relation to the holder of a licence,

the holder of the licence shall not later than 14 days after the occurrence of the event, give to the Commission particulars in writing of the event in the prescribed form.

42. (1) The Commission shall keep in a form that it thinks fit a register of the holders of licences under this Act specifying - Register of licence holders.

- (a) in relation to each holder of a licence -
  - (i) the name of the holder;
  - (ii) the address of the principal place of business;
  - (iii) where the business is carried out under a name or style other than the name of the holder of the licence, the name or style under which the business is carried out;

- (iv) the activities covered by the licence; and
  - (v) any other information as the Commission may determine; and
- (b) in relation to a holder of a representative's licence, provisions referred to under paragraph (a) and the following -
- (i) the name of the dealer, broker, investment adviser or fund manager in relation to whom the licence was issued; and
  - (ii) where the business of the dealer, investment adviser or fund manager is carried out under a name or style other than the name of the dealer, broker, investment adviser or fund manager, the name or style under which the business is carried out.

Inspection of register. 43. The information contained in the entries included in the register shall be open for inspection free of charge at such times and places as the Commission may determine and the Commission may publish the information contained in the entries in any form it thinks appropriate and may offer copies of any information for sale.

Operation pending renewal etc. 44. Where a licensee has before the expiration of the licence, applied for a renewal and the renewed licence is not issued, the licensee shall not be held liable for not holding a licence until the licence is renewed or the application is refused.

Appeals. 45. (1) A person who is aggrieved by the refusal of the Commission to grant or renew a licence may appeal to the Securities Tribunal within thirty days of the Commission's decision.

(2) The Securities Tribunal may confirm the Commission's decisions or give any direction in the matter as it thinks just.

#### PART VII—REGISTERS OF INTERESTS IN SECURITIES

46. (1) The following persons shall maintain a register in the prescribed form relating to the securities in which they have an interest -

Register of securities.

- (a) a dealer;
- (b) a dealer's representative;
- (c) a broker;
- (d) a broker's representative;
- (e) an investment adviser;
- (f) an investment adviser's representative;
- (g) a fund manager;
- (h) a custodian or nominee company of a custodian in relation to securities in which it has an interest as beneficiary or principal;
- (i) an authorised registrar; and
- (j) a financial journalist.

(2) A person referred to in subsection (1) shall enter particulars of the securities in which he has an interest in the register within seven days of the acquisition of the interest.

(3) Reference to securities under subsection (1) shall be a reference to securities that are publicly held or securities which are listed or traded on a stock exchange.

(4) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le 10,000,000,00

Notice of particulars.

47. (1) A person referred to in subsection (1) of section 46 shall notify the Commission in the prescribed form of any particulars prescribed including the place at which he should keep the register.

(2) A notice under subsection (1), shall be given-

- (a) as part of the person's application for the licence in the case of a person who is required by this Act to hold a licence; or
- (b) if the person becomes a person to whom this section applies, within 14 days after becoming such a person, in the case of any other person.

(3) The notice shall be given notwithstanding that the person has ceased to be a person to whom this section applies before the expiration of the period referred to in paragraph (b) of subsection (2).

(4) Where a person ceases to be a person to whom this section applies, he shall give notice of the fact to the Commission within 14 days of his ceasing to be such a person.

(5) A person who fails to give notice as required by this section commits an offence and shall be liable on conviction to a fine of not less than Le 5,000,000,00.

Defence to prosecution.

48. (1) It shall be a defence to a prosecution for failing to comply with sections 46 and 47 if the defendant proves that his failure was due to him not being aware of a fact or an occurrence, the existence of which, constitutes the offence.

(2) For the purposes of subsection (1), a person shall in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at the time when an employee or agent of his who has duties or acts in relation to his employer's or principal's interest in the securities concerned, became aware.

49. (1) The Commission or any authorised person may require any person to whom this section applies to produce the register required to be kept under section 46 for inspection and the Commission or authorised person may make extracts from the register.

Production of register.

(2) Any person who fails to produce a register for inspection or fails to allow any person authorised under subsection (1) to make a copy or extracts from the register commits an offence and shall be liable on conviction to a fine of not less than Le 5,000,000,00.

50. (1) The Commission or any authorised person may by notice in writing require the proprietor or publisher of a newspaper or periodical to supply the name and address of the financial journalist who contributed any advice or prepared any analysis or report that has been published in a newspaper or periodical owned or published by that proprietor or publisher or with names and addresses of all the financial journalists who have contributed advice or prepared any analysis or report within a period specified in the notice.

Particulars of financial journalist.

(2) A proprietor or publisher of a newspaper or periodical who fails to comply with a notice under subsection (1) without reasonable excuse commits an offence and shall be liable on conviction to a fine of not less than Le 5,000,000,00 or to imprisonment, for a term not less than 1 year.

Extract of Register.

51. The Commission may supply a copy of the extract of a register obtained under section 46 to a person who in the opinion of the Commission should be informed of the dealing in securities disclosed in the register in the public interest.

Interest in securities.

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

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

- (a) the body corporate or its directors are under an obligation, whether formal or informal to act in accordance with the directions, instructions or wishes of that person in relation to that security;
- (b) that person has a controlling interest in the body corporate or;
- (c) that person is or the associates of that person are entitled to exercise or control the exercise of not less than 30% of the votes attached to the voting shares in the body corporate.

(3) For the purposes of paragraph (c) of subsection (2), a person is an associate of another person if the person is -

- (a) a body corporate which is an associated company in relation to the other person;
- (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed to or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (2);

(c) 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

(d) a body corporate in accordance with the directions, instructions or wishes of which, or the directors to whom that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

(4) A person shall be deemed to have an interest in a security in any of the following circumstances-

- (a) where he has entered into a contract to purchase a security;
- (b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (c) where he has the right to acquire a security or an interest in a security under an option; or
- (d) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a body corporate or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.

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

(6) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.

(7) The following shall be disregarded as an interest in security-

- (a) an interest in a security where the interest is that of a person who holds the security as a bare trustee;
- (b) an interest in a security of a person whose ordinary business includes the lending of money where he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a security being an interest held by him by reason of his holding a prescribed office; and
- (d) such interest in securities as may be prescribed by the Commission in Regulations made under this Act.

(8) An interest in a security shall not be disregarded by reason of -

- (a) its remoteness;
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is or is capable of being made subject to restraint or restriction.

#### PART VIII- CONDUCT OF SECURITIES BUSINESS

53. (1) A licensee shall keep adequate and orderly records of -

- (a) its business affairs, financial position, internal organisation, compliance with statutory requirements and risk management system; and
- (b) business transactions undertaken for clients, the business affairs of clients and the relationship with customers.

(2) The nature and form of records referred to under subsection (1) shall be as may be prescribed by Regulations made under this Act.

(3) Records shall be kept for a period of at least seven years.

(4) A licensee who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le 20,000,000,00 or to imprisonment, for a term not less than 3 years.

54. (1) A dealer or broker shall, in respect of a transaction of sale or purchase of securities-

Orders and contract notes .

- (a) give written confirmation of the instruction giving rise to the transaction to the persons listed in subsection (2);
- (b) keep a journal of all instructions in a chronological order; and
- (c) give a contract that complies with subsection (3) to the persons listed under subsection (2).

(2) The persons referred to under paragraph (a) of subsection (1) are as follows-

- (a) the person for whom the dealer or broker entered into the transaction where the transaction took place in the ordinary course of business at a stock exchange and the dealer or broker entered into the transaction otherwise than as a principal;
- (b) the person for whom the dealer or broker entered into the transaction and the person with whom the dealer or broker entered into the transaction where the transaction does not take place in the ordinary course of business at a stock exchange and the dealer or broker entered into the transaction otherwise than as principal; and
- (c) the person with whom the dealer entered into the transaction where the transaction did not take place in the ordinary course of business at a stock exchange and the dealer entered into the transaction as principal.

(3) A contract given by a dealer or broker under subsection (1) shall include -

- (a) the name or style under which the dealer or broker carries on his business as a dealer or broker and the address of the principal place at which he carries out his business;
- (b) where the dealer or broker is dealing as a principal with a person who is not the holder of a dealer's or broker's licence, a statement that he is so acting;

- (c) the name and address of the persons to whom the dealer or broker gives the contract;
- (d) the day on which the transaction took place and if the transaction did not take place in the ordinary course of business at a stock exchange, a statement to that effect;
- (e) the number, amount and description of the securities that are the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of the consideration;
- (h) the rate and amount of commission (if any) charged;
- (i) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and
- (j) if an amount is to be added or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the amount and the nature of the benefit.

(4) A dealer or broker shall not include in a contract given under subsection (3), a name that he knows or could reasonably be expected to know, is not the name by which the person is ordinarily known, as the name of the person with or for whom he has entered into the transaction.

(5) A reference to this section to a dealer dealing or entering into a transaction as principal includes a reference to a person-

- (a) dealing or entering into a transaction on behalf of a person associated with him;
- (b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or
- (c) who carries on business as a dealer on behalf of a body corporate in which his interest and the interest of his directors constitute a controlling interest.

(6) For the purposes of this section -

- (a) a dealer who is a member of a stock exchange shall not be taken to have entered into a transaction as principal because the transaction was entered into with another dealer who is a member of a stock exchange; and
- (b) a transaction takes place in the ordinary course of business at a stock exchange if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purpose of this section.

(7) Notwithstanding subsection 2, a person shall not be deemed to be associated with another person for the purposes of this section because he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries out a business dealing in securities.

(8) A dealer or broker who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding Le 15,000,000,00 or to imprisonment, for a term not less than 3 years.

55. (1) Where a person who is a dealer, broker, investment adviser, fund manager or his representative sends circulars or other similar written communication in which he makes a recommendation, whether expressly or by implication regarding securities or class of securities, he shall include in each circular or communication a concise statement of the nature of any interest or any interest in the acquisition or disposal of those securities or securities included in that class, that he or a person associated with him has, at the date on which the circular or communication is sent.

Disclosure of certain interest.

(2) It shall be a defence to a prosecution for the contravention of subsection (1) for the defendant to establish that at the time when the circular or communication was sent, he was not aware and could not reasonably be expected to have been aware that-

- (a) he had an interest in the acquisition or disposal of those securities included in that class; or
- (b) the person associated with him had an interest in the acquisition or disposal of those securities included in that class.

(3) For the purposes of subsections (1) and (2)-

- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will or is likely to accrue directly or indirectly to the person upon or arising out of the disposal of the securities;
- (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement regarding securities shall be deemed to have an interest in the acquisition or disposal of those securities; and

- (c) a person shall not be deemed to be associated with another person because he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries out securities related business unless they are acting jointly or together or in accordance with an agreement made between them relating to the sending of the circular or communication or the making of the recommendation.

(4) Where a person has subscribed for or purchased securities and offers any of the securities for sale, he shall not make a recommendation on the securities whether orally, in writing, expressly or impliedly unless he informs each person to whom the recommendation is made that he acquired the securities for that purpose.

(5) Where-

- (a) securities have been offered for subscription or purchase; and
- (b) a person has subscribed or purchased the securities under an underwriting or sub-underwriting agreement,

the person shall not make an offer to sell the securities otherwise than in the ordinary course of trading on a stock exchange or make a recommendation on the securities during 90 days after the close of the offer, unless the offer or recommendation contains a statement that the offer or recommendation relates to securities that he has acquired under an underwriting or sub-underwriting agreement.

(6) A person who is a dealer, broker, investment adviser, fund manager or his representative shall not send to any person a circular, written offer, recommendation or other communication to which subsections (1), (4) or (5) apply unless the circular, written offer, recommendation or other communication is signed by-

- (a) that person if he is a natural person; or
- (b) a director, executive officer or secretary of the body corporate if the person is a company.

(7) Where a person who is a dealer, broker, fund manager or investment adviser or his representative sends to another person a circular, written offer, recommendation or other communication to which subsections (1), (4) or (5) apply, he shall preserve a copy of the circular, written offer, recommendation or other communication duly signed as specified in subsection (6) for 7 years from the date of signing.

(8) Reference in this section to an offer of securities shall be construed to include a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(9) For the purpose of this section a circular, written offer, recommendation or other communication sent to a person shall be deemed to have been sent by the body corporate if it is signed by a director, executive officer or secretary.

(10) The Commission may exempt a security or any class of securities from the application of this section if it is in the public interest.

(11) Any person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le 20,000,000,00 or to imprisonment, for a term not less than 3 years.

Recommendations of adviser.

56. (1) An adviser shall not make a recommendation, expressed or implied, on securities or a class of securities to a person who may reasonably be expected to rely on the recommendation, unless he has reasonable basis for making the recommendation to the person.

(2) For the purposes of subsection (1), an adviser shall not have a reasonable basis for making a recommendation to a person unless-

- (a) the adviser has given consideration to and investigated on the subject matter of the recommendation as is reasonable in all the circumstances and having regard to the information possessed by him concerning the investment objectives, financial situation and particular needs of the person, for the purpose of ascertaining that the recommendation is appropriate; and
- (b) the recommendation is based on that consideration and investigation.

(3) An adviser who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine of not less than Le5,000,000,00

(4) Where an adviser contravenes subsection (1) by making a recommendation to a person and the person because of the reasonability of the recommendation and other relevant circumstances relies on the recommendation of the adviser and the person relying on the recommendation does any particular act or refrains from doing any particular act and the person suffers loss or damage because of doing the act or refraining from doing the act, the adviser shall be liable to pay damages to the person for that loss or damage.

(5) In this section, a reference to an adviser shall be a reference to a person who is a dealer, broker, investment adviser, fund manager or his representative.

57. (1) Subject to subsection (3), a dealer shall not deal in any securities as principal with a person who is not a dealer unless he informs the person with whom he is dealing that he is acting in the transaction as principal and not as agent. Dealings as principal.

(2) A reference in this section to a dealer dealing or entering into a transaction as principal includes a reference to a person -

- (a) dealing or entering into a transaction on behalf of a person associated with him;
- (b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or
- (c) where he carries on business as a dealer on behalf of a body corporate in which his interest and the interest of his directors constitute a controlling interest.

(3) A dealer who as principal enters into a transaction of sale or purchase of securities with a person who is not a dealer shall state in the contract note that he is acting in the transaction as principal and not as agent.

(4) Subsection (1) shall not apply to a transaction entered into by a dealer who is a member of a stock exchange and specialises in transactions relating to odd lots of securities being a transaction of sale or purchase of an odd lot of securities.

(5) Where a dealer fails to comply with subsections (1) or (3) the purchaser of the securities may rescind the contract by a notice of rescission in writing given to the dealer not later than 30 days after the receipt of the contract note if he has not disposed of the securities and where a dealer fails to comply with subsection (1) or (3), the vendor of the securities may rescind the contract.

(6) Nothing in subsection (5) shall affect any right that a person has unless provided for under this subsection.

(7) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le 10,000,000,00.

Dealings by employees of holders of licence.

58. A dealer, broker, fund manager or investment adviser who gives unsecured credit to his employee or to a person whom he knows is associated with such employee where -

- (a) the unsecured credit is given for enabling or assisting the person to whom the unsecured credit is given to purchase or subscribe for securities; or
- (b) the person giving the unsecured credit knows or has reason to believe that the unsecured credit will be used to purchase or subscribe for securities.

commits an offence and shall be liable on conviction to a fine of not less than Le 5,000,000,00.

Priority to client orders.

59. (1) Subject to subsection (2), a dealer shall not enter as principal or on behalf of a person associated with him into a transaction of purchase or sale of securities that are permitted to be traded in the stock market of a stock exchange, if a client of the dealer, who is not associated with the dealer, has instructed the dealer to purchase or sell respectively, securities of the same class and the dealer has not complied with the instruction.

(2) Subsection (1) shall not apply to entering into a transaction by a dealer as principal on behalf of a person associated with him where -

- (a) the instructions from the client of the dealer requires the purchase or sale of securities on behalf of the client to be effected only on specified conditions at which the securities were to be purchased or sold and the dealer has been unable to purchase or sell the securities because of those conditions; or
- (b) the transaction is entered into in the prescribed circumstances.

(3) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le 10,000,000,00.

60. (1) Where a client deposits money with or lends money to a dealer or broker, the dealer or broker shall - Client's money.

- (a) deposit the money in an account in a bank not later than the next day on which the bank is open for business after the receipt of the money and the account shall not contain any money other than money deposited with or lent to the dealer or broker;
- (b) furnish the client with a document in the prescribed form setting out the terms and conditions on which the deposit or loan is made and accepted including the purpose for which and the manner in which the money is to be used by the dealer or broker;

- (c) retain the money in the bank account until the client gives him a written statement acknowledging that the client has received the document referred to in paragraph (b); and
- (d) use the money only for the purpose and in the manner -
  - (i) set out in the document referred to in paragraph (b); or
  - (ii) agreed to by the client in writing after the document referred to in paragraph (b) was furnished by the client.

(2) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le 20,000,000,00.

Securities through sale.

61. (1) Subject to Regulations made under this Act, a person shall not sell securities to a purchaser unless at the time when he sells them -

- (a) he has or where he is selling as agent, his principal has; or
- (c) he believes on reasonable grounds that he has, or where he is selling as agent that the principal has,

an existing exercisable and unconditional right to vest the securities in the purchaser.

(2) For the purpose of this section where a person -

- (a) implies the sale of securities;

- (b) offers to sell securities;
- (c) holds himself out as entitled to sell securities; or
- (d) instructs a dealer to sell securities,

he shall be deemed to sell the securities.

(3) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le 20,000,000,00 or to imprisonment, for a term of not less than 3 years.

#### PART IX - ACCOUNTS AND AUDIT

62. Sections 63 to 78 shall apply to the holder of a dealer's licence, a broker's licence or a fund manager's licence and to the business of dealing in securities carried out by the holder of the licence whether in Sierra Leone or elsewhere and the business of dealing in securities under any other licence as may be prescribed. Application.

63. (1) A person to whom this section applies shall - Accounts.

- (a) keep accounting records and explain the transactions and financial position of the business of dealing in securities carried out by him;
- (b) keep his accounting records in a manner that will enable a fair presentation of his financial statements from time to time; and
- (c) keep his accounting records in a manner that will enable the financial statement of the business of dealing in securities carried out by him to be conveniently and properly audited.

(2) A fund manager, dealer or broker shall be deemed not to have complied with subsection (1) unless the records -

- (a) are kept in writing and in English language unless, as may be approved in specific cases by the Commission, in a manner that will enable them to be readily accessible and readily converted into writing in English;
- (b) are kept in sufficient details to show particulars of -
  - (i) all moneys received or paid by the fund manager, dealer or broker including moneys paid to or disbursed from a trust account;
  - (ii) all purchases and sales of securities made by the fund manager, dealer or broker the charges and credits arising from them and the names of the buyer and seller respectively of each of those securities;
  - (iii) all income received from commissions, interests and other sources and all expenses, commissions and interest paid by the fund manager, dealer or broker;
  - (iv) all the assets and liabilities including contingent liabilities of the fund manager, dealer or broker;
  - (v) all securities that are the property of the fund manager, dealer or broker showing by whom the securities or the documents of title to the securities are held and where they are held by some other person whether or not they are held as security against loans or advance;

- (vi) all securities that are not the property of the fund manager, dealer or broker and for which the fund manager or dealer or any nominee controlled by the fund manager, dealer or broker is accountable showing by whom and for whom the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances made to the fund manager, dealer or broker;
- (vii) all arbitrage transactions entered into by the fund manager, dealer or broker; and
- (viii) all underwriting transactions entered into by the fund manager, dealer or broker;
- (c) are kept in sufficient detail to show separately, particulars of every transaction by the fund manager, dealer or broker;
- (d) specify the day on which or the period during which each transaction by the fund manager, dealer or broker took place;
- (e) contain copies of acknowledgments of the receipt of securities or of document of title to securities received by the fund manager, dealer or broker from the clients for sale or safe custody clearly showing the name or names in which the particular securities are registered; and

- (f) the records are in line with international acceptable accounting and auditing standards approved by the Commission.

(3) Without prejudice to subsection (2), a person to whom this section applies shall keep the records in sufficient detail to show separately, particulars of all transactions undertaken by him with or for the account of -

- (a) his clients excluding where he carries on business in partnership, the partners of the firm;
- (b) the fund manager, dealer or broker himself or where he carries out business in partnership, the partners of the firm;
- (c) other dealers carrying out business in Sierra Leone;
- (d) fund manager, dealers or brokers outside Sierra Leone; and
- (e) employees of the person.

(4) An entry in the accounting and other records of a person to whom this section applies which is required to be kept in accordance with this section shall be deemed to have been made by or with the authority of that person.

(5) Where a record required by this section to be kept is not kept in writing and in English, the fund manager, dealer or broker shall if required to convert the record into writing in English by a person who is entitled to examine the record, comply with the requirements within 3 days or such time as may be allowed by the Commission.

(6) Notwithstanding this section, a fund manager, dealer or broker shall not be deemed to have failed to keep a record referred to under subsection (1) because the record is kept as a part of or in conjunction with, records that relate to a business other than dealing in securities that is carried on by him.

(7) Where accounting or other records are kept by a fund manager, dealer or broker at a place outside Sierra Leone, the fund manager, dealer or broker shall cause to be sent to and kept at a place in Sierra Leone particulars on the business dealt with in the records as will enable true and fair income and expenditure accounts and statements of financial position and statements of cash flows to be prepared.

(8) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le 15,000,000.00.

64. (1) Where a fund manager, dealer or broker receives for safe custody, documents that are securities or are documents of title to securities of any client and for which the fund manager, dealer or broker is accountable, the fund manager, dealer or broker shall -

- (a) if the documents are not registered in the name of the client of the body corporate for whom the securities were issued or made available and the client does not make a request as referred to under paragraph (b) or (c), cause the documents to be registered;
- (b) if the client requests that the documents be registered by the body corporate by whom the securities were issued or made available in the name of a nominee controlled by the fund manager, dealer or broker, cause them to be registered; or

Security documents.

- (c) if the client requests that the documents be deposited in safe custody with the fund manager, dealer or broker's bankers cause them to be deposited.

(2) A fund manager, dealer or broker shall not deposit as security for a loan or advance, documents that are securities or are documents of title to securities of a client unless he-

- (a) gives a written notice to the client identifying the documents and stating that he intends to deposit them as security for a loan or advance; and
- (b) deposits the documents as security for a loan or advance that does not exceed the amount owed on the day of the deposit by the client in connection with a transaction entered into on his behalf,

the fund manager, dealer or broker shall withdraw the documents from deposits within 3 working days after he receives the amount owed to him.

(3) Where a fund manager, dealer or broker deposits as security for a loan or advance made to him, documents that are securities or are documents of title of another person and for which the fund manager, dealer or broker or nominee controlled by the fund manager, dealer or broker is accountable, the fund manager, dealer or broker shall send to the other person written notice to that effect at the expiration of 6 months after the date on which the documents are deposited and at the expiration of each subsequent period of 6 months if the documents are still maintained on deposit.

(4) A fund manager, dealer or broker who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le. 5,000,000,00.

65. (1) A fund manager, dealer or broker shall open and maintain an account designated as a trust account with a bank. <sup>Trust account.</sup>

(2) A fund manager, dealer or broker shall pay into the account referred to in subsection (1) all moneys held by him in trust for a client not later than the next day on which the bank is open for business following the day on which the money is received by the fund manager, dealer or broker.

(3) Notwithstanding subsection (1), where moneys that are required by this section to be paid into a trust account are received by a fund manager, dealer or broker in a place outside Sierra Leone, the fund manager, dealer or broker may pay the moneys into a trust account maintained by the fund manager, dealer or broker in that place.

(4) For the purposes of subsection (2) moneys received by a fund manager, dealer or broker from a client other than-

- (a) moneys received on brokerage and other proper charges;
- (b) moneys received in payment or part payment for securities delivered to the fund manager, dealer or broker; or
- (c) moneys to which section 60 applies

shall be deemed to be held in trust for that client.

(5) Subsection (1) shall not apply to a cheque, bank draft, money order or postal order made payable to or to the order of a specified person or bearer (not being a cheque, bank draft, money order or postal order in which the payee is the fund manager, dealer or broker, a partner of the fund manager, dealer or the firm in which the fund manager, dealer or broker is a partner) received from or on behalf of a client with instructions, expressed or implied that the cheque, bank draft, money order or postal order is to be delivered to the person to whom it is payable.

(6) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than Le 10,000,000,00.

Moneys  
withdrawn  
from trust  
account.

66. (1) A fund manager, dealer or broker shall not withdraw money from a trust account except for the purpose of -

- (a) making a payment to a person entitled to the money or with the written directions of a person entitled to the money;
- (b) defraying brokerage and other proper charges or ;
- (c) paying to himself moneys to which the fund manager or dealer is entitled being moneys which are required to be reimbursed to the fund manager, dealer or broker in relation to a payment properly made by the fund manager, dealer or broker on behalf of the person otherwise entitled.

(2) A fund manager, dealer or broker making a payment that is otherwise unauthorised by law, commits an offence and shall be liable on conviction to a fine of not less than Le. 25,000,000,00 or to imprisonment for a term of not less than 3 years.

(3) A fund manager, dealer or broker who withdraws money from a trust account with intent to defraud commits an offence and shall be liable on conviction to a fine of not less than Le 40,000,000,00 or to imprisonment for a term of not less than 5 years.

(4) Except as provided for in this Part, moneys held in a trust account shall neither available for payment of the debts of a fund manager, dealer or broker, be liable to be paid or taken in execution for debts under the order or process of a court.

(5) Nothing in this Part takes away or affects a lawful claim or lien that a person has against or on any moneys for a trust account or any moneys received for the purchase of securities or from the sale of securities before those moneys are paid into a trust account.

(6) A fund manager, dealer or broker shall not be guilty of an offence under subsection (1), where he withdraws from a trust account an amount that is the whole or part of the amount of a cheque that has been deposited into the account but that has not been paid and has not been refused payment by the banker on whom it is drawn.

(7) Where a fund manager, dealer or broker withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been deposited into the account but that has not been paid by the banker on whom it is drawn and the banker on whom it is drawn refuses payment of the cheque, the fund manager, dealer or broker shall immediately pay into the trust account by cash or bank cheque an amount equal to the amount withdrawn from the trust.

(8) Where a fund manager, dealer or broker fails to comply with subsection (7) he commits an offence and shall be liable on conviction to a fine of not less than Le. 20,000,000,00

(9) Where a fund manager, dealer or broker fails to comply with subsection (7) and the fund manager, dealer or broker is a member of a stock exchange, the failure shall be taken to be a defalcation.

(10) A person convicted of an offence under this section shall in addition to any other penalty imposed upon him for the offence be liable to refund any money lost by reason of the act constituting the offence.

Audit.

67. (1) Within 1 month after a person becomes the holder of a fund manager, dealer or broker's licence he shall appoint an auditor to audit his account.

(2) Subject to subsections (6) and (7), an auditor of a fund manager, dealer or broker shall be appointed for a term of 3 years but not exceeding 5 years and upon expiry of that term, shall not be appointed for a further term until the expiration of at least 3 years.

(3) A person shall not consent to be appointed as auditor of a fund manager, dealer or broker, or act as an auditor of a fund manager, dealer or broker or prepare a report required to be prepared under this Act by an auditor of a fund manager, dealer or broker-

- (a) if, in the case of an individual he-
  - (i) is not a qualified company auditor;
  - (ii) is indebted to the fund manager, dealer or broker for an amount exceeding the amount prescribed and determined by the Commission;
  - (iii) is a partner, director or employee of the fund manager, dealer or broker; or close relative of the majority shareholder or directors ;
- (b) in the case of a body corporate unless-
  - (i) at least one member of the body corporate is ordinarily resident in Sierra Leone;
  - (ii) all the members of the body corporate ordinarily resident in Sierra Leone are qualified company auditors;

(iii) no member of the body corporate is indebted to an amount exceeding the amount prescribed by the Commission;

(iv) no member of the body corporate is a partner, director or employee of the fund manager, dealer or broker.

(4) The appointment of a company or a firm as auditor of a fund manager, dealer or broker shall be taken to be the appointment of all persons who are members of the firm or company, whether resident in Sierra Leone or not at the date of the appointment.

(5) A person shall not wilfully disqualify himself from acting as auditor of a fund manager, dealer or broker if he has been appointed auditor while the appointment continues.

(6) An auditor of a fund manager, dealer or broker shall hold office until -

- (a) he dies;
- (b) he is removed or resigns from office in accordance with section 68; or
- (c) his term of office expires;

unless he ceases to qualify as an auditor under subsection (3).

(7) If the fund manager, dealer or broker fails to appoint a successor to an auditor whose term of office has expired, the Commission may appoint an auditor on terms and conditions as it thinks fit and the appointment shall be binding on the fund manager, dealer or broker.

(8) Within 14 days after a vacancy occurs in the office of an auditor or of a fund manager, dealer or broker, if there is no surviving or continuing auditor of the fund manager, dealer or broker, the fund manager, dealer or broker shall appoint another auditor to fill the vacancy.

(9) While a vacancy in the office of an auditor continues, the surviving or continuing auditor (if any) may act as auditor.

(10) A fund manager, dealer or broker shall not appoint a person as his auditor unless that person has before the appointment, consented by notice in writing given to the fund manager, dealer or broker to act as auditor and has not withdrawn his consent by notice in writing given to the fund manager, dealer or broker.

(11) A report or notice made or given by a firm or company appointed as auditor of a fund manager, dealer or broker for the purposes of this Part shall be signed in the name of the firm or company which is a qualified company auditor.

(12) Where a person is appointed as auditor under subsection (1), not being an appointment made because of subsection (7), the fund manager, dealer or broker shall within 14 days after the appointment, lodge with the Commission a notice in writing that he has made the appointment and specifying the name of the person or firm.

(13) Where a body corporate or firm contravenes this section each member of the company or firm commits an offence and shall be liable on conviction to a fine of not less than Le. 20,000,000,00.

Removal  
and  
resignation

68. (1) A fund manager, dealer or broker may with the consent of the Commission remove his auditor from office.

(2) An auditor of a fund manager, dealer or broker may by notice in writing given to the fund manager, dealer or broker resign as auditor if -

(a) he has by notice in writing to the Commission, applied for consent to resign and has, at or about the same time, notified the fund manager, dealer or broker in writing of his application to the Commission; and

(b) he has received the consent of the Commission.

(3) The auditor shall in the notice referred to in subsection (2), give reasons for seeking to resign from office.

(4) The Commission shall as soon as practicable after receiving a notice from an auditor under subsection (2), notify the auditor and the fund manager, dealer or broker whether it consents to the resignation of the auditor.

(5) A statement made by an auditor in an application to the Commission under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application -

(a) may not be admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence under section 106 or 107; and

(b) may not be made the grounds of a prosecution other than a prosecution for an offence under section 106 or 107 or for an action or suit against the auditor and a certificate of the Commission that the statement was made in the application or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.

(6) Subject to subsection (7) and to any order of the High Court under subsection (9), the resignation of an auditor takes effect-

- (a) on the date (if any) specified for the purpose in the notice of resignation;
- (b) on the date on which the Commission consents to the resignation or;
- (c) on the date (if any) fixed by the Commission for the purpose whichever last occurs.

(7) Where on the retirement or withdrawal from a firm or company of a member, the body will no longer be capable because of subparagraph (i) of paragraph (b) of subsection (3) of section 67 from acting as auditor of a fund manager, dealer or broker, the member retiring or withdrawing shall, if not disqualified from acting as auditor of the fund manager, dealer or broker, be deemed to be the auditor of the fund manager dealer or broker until he obtains the consent of the Commission to his retirement or withdrawal.

(8) Within 14 days after the receipt of a notice of resignation form, an auditor of a fund manager, dealer or broker or where an auditor of a fund manager, dealer or broker is removed, the fund manager, dealer or broker shall lodge a notice of the resignation or removal in such form as may be prescribed by the Commission.

(9) A person aggrieved by the refusal of consent by the Commission to the removal or resignation of an auditor of a fund manager, dealer or broker may, within 1 month after the date of refusal, appeal to the High Court against the refusal and the High Court may confirm or reverse the refusal and may make such further order in the matter as it considers proper.

Fees and expenses.

69. A reasonable fee and expenses of an auditor of a fund manager, dealer or broker shall be payable by the fund manager, dealer or broker.

Account.

70. (1) A fund manager, dealer or broker shall prepare true and fair financial statement containing information and prescribed matters and auditor's report containing prescribed information and submit to the Commission before the prescribed day for each financial year.

(2) The Commission may on an application made by a fund manager, dealer or broker and his auditor before the expiration of 2 months or 3 months expiring on the prescribed day as defined in subsection (4) or if that period has been extended pursuant to an approval previously given under this subsection before the expiration of the extended period, approve an extension or further extension of the period and the approval may be given subject to conditions (if any) as the Commission may impose.

(3) Where an approval under subsection (2) is given subject to conditions, the fund manager, dealer or broker shall comply with the conditions.

(4) In this section -

- (a) "financial year" in relation to a fund manager, dealer or broker being a body corporate means the financial year of the body corporate within the meaning of the Companies Act;
- (b) "prescribed day" in relation to a financial year of a fund manager, dealer or broker being a body corporate means the day that is 3 months after the end of that financial year or where further time is approved under subsection (2), the day on which the extended time expires.

71. (1) Where an auditor, in the performance of his duties as auditor of a fund manager dealer or broker becomes aware of a breach he shall submit to the Commission a written report on the matter and send a copy of the report to the fund manager dealer or broker and to each stock exchange of which the fund manager is a member within seven days after becoming aware of the matter.

Report to Commission.

(2) In this section "breach" means an action which in the opinion of the auditor -

- (a) adversely affects the ability of the fund manager, dealer or broker to meet his obligations as fund manager, dealer or broker ;and
- (b) constitutes a breach of -
  - (i) the accounts and audit responsibilities under Part 1X; or
  - (ii) condition of a licence issued to the fund manager dealer or broker under this Act.

Report by stock exchange.

72. (1) Where a breach is caused by a fund manager dealer or broker who is a member of a stock exchange and the stock exchange is aware of the breach, the stock exchange shall immediately after becoming aware of the breach submit to the Commission a written report on the breach and send a copy of the report to the fund manager dealer or broker.

(2) In this section "breach" means an action which in the opinion of the stock exchange -

- (a) adversely affects the ability of the fund manager dealer or broker to meet his obligations as fund manager dealer or broker;
- (b) constitutes a contravention of the accounts and audit responsibilities under this Act; or
- (c) constitutes a contravention of a condition of the licence issued to the fund manager, dealer or broker.

(3) No legal action or proceedings shall be brought against a stock exchange or an authorised officer of a stock exchange for any act done pursuant to this section if done in good faith.

73. (1) An auditor shall not be liable for defamation if he makes or issues an oral or written statement in good faith in the course of his duties as auditor. Defamation.

(2) A person shall not be liable for defamation if an auditor publishes a document in good faith in the course of his duties as auditor.

(3) Nothing in this section shall limit or affect any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

74. Nothing in sections 63 to 78 shall prevent a stock exchange from imposing on its members obligations or requirements not inconsistent with this Act relating to - Obligation by stock exchange.

- (a) the audit of accounts (including the audit of accounts by an auditor appointed by the stock exchange);
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of books.

75. Where the Commission shows to the satisfaction of the court that - Restraint.

- (a) there are reasonable grounds for believing that there is a deficiency in a trust account, whether kept within or outside Sierra Leone, of a person who is or has been a fund manager, dealer or broker or in an account kept pursuant to subsection (1) of section 65 whether within or outside Sierra Leone by a person who is or has been a fund manager, dealer or broker;

- (b) there has been undue delay or unreasonable refusal on the part of a person who is or has been a fund manager, dealer or broker in paying, applying or accounting for trust moneys as required under this Act;
- (c) a person who is or has been a fund manager, dealer or broker has paid moneys into a trust account pursuant to section 65 or into an account pursuant to section 60;
- (d) the licence of the fund manager, dealer or broker has been revoked or suspended;
- (e) any person who is a representative of the fund manager dealer or broker is incapable because of physical or mental infirmity of managing his affairs;
- (f) the person has ceased to carry out securities business; or
- (g) the licence holder is in receivership or liquidation or the person who is a representative of the licence holder has died without appointment of any successor,

the Court may make an order restraining dealing because of all or any of the bank accounts of that person, subject to any terms and conditions imposed by the Court.

Disclosure. 76. Where an order made under section 75 is directed to a banker, the banker shall-

- (a) disclose to the Commission every account kept at the bank in the name of the person to whom the order relates and any account that the banker reasonably suspects is held or kept at the bank for the benefit of that person; and

- (b) permit the Commission to make a copy of or to take an extract from any account of the person to whom the order relates or any of the banker's book relating to that person.

77. Where an order is made pursuant to section 76, the High Court may, on the application of the Commission or a person affected by the order make further orders-

Orders and directions.

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

78. (1) An order made under section 75 may include directions to the person to whom the moneys are paid directing him to -

Orders on payment of moneys.

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

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

(3) The Court may give directions to the persons who should be paid, the amount to be paid, in whole or in part, and the payment of the balance of the money.

#### PART X - STOCK EXCHANGE

Establishment of stock market and stock settlement facilities.

79. No person shall establish or assist in establishing, maintaining or holding himself out as providing or maintaining -

- (a) a stock market; or
- (b) a clearing and settlement service,

unless on approval issued by the Commission under section 80 for that purpose.

Approval of stock exchange.

80. (1) Application for approval to operate as a stock exchange shall be made to the Commission in the prescribed form.

(2) The Commission may grant an approval to a body corporate to operate a stock exchange if it is satisfied -

- (a) that at least -
  - (i) three shareholders of the body corporate in the case of a company limited by shares; and
  - (iii) three members in the case of a company limited by guarantee, will carry on the business of dealing in securities independent of and in competition with each other;
- (b) that the rules of the body corporate will make satisfactory provision-
  - (i) for the exclusion from membership of the stock exchange of persons who are not of good character and high business integrity;

(ii) for the expulsion, suspension or disciplining of members of the stock exchange for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of or failure to comply with the rules of the stock exchange or this Act;

(iii) for the closing out of a member's unsettled market contract where the member appears to be unable or is likely to become unable to meet obligations in market contracts;

(iv) for the making of a report to the Commission by the body corporate whenever it rejects any application for membership of the stock exchange, where it suspends or expels a member, where it suspends trading in particular securities;

(v) for the terms and conditions of the chief executive officer of the body corporate, including a term that the chief executive officer shall not be liable for dismissal or removal from office without the prior approval of the Commission;

(vi) on the conditions under which securities may be listed for trading in the market proposed to be conducted by the body corporate;

(vii) on the conditions governing dealings in securities by members of the stock exchange and the clearing and settlement deals;

- (viii) on the class of securities that may be dealt with by members of the stock exchange;
- (ix) for the governance of the stock exchange by a council;
- (x) on fair representation of persons in the selection of its council members and the administration of its affairs including provision to ensure that one or more council members are representative of listed companies, investors and the professions relevant to securities trading and not associated with a stock broker or dealer; and
- (xi) generally for carrying out the business of the stock exchange with due regard to the interest of the public.

(3) Nothing in this section shall preclude the Commission from appointing any person who is knowledgeable in the securities industry and who is not associated with a stock broker or dealer to be on the council of a stock exchange to represent the public interest and a person so appointed shall -

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

(4) The Commission shall publish in the Gazette, notice of approval for the establishment of a stock exchange or a clearing and settlement services including the cancellation or suspension of such approval.

(5) Where the Commission is of the opinion that an approval granted for establishing a stock exchange or clearing and settlement services should be cancelled in the public interest, it may serve on the council of the stock exchange or the entity providing clearing and settlement, a written notice that it is considering the cancellation of the approval for the reasons stated in the notice and shall give the person an opportunity to be heard on the matter.

(6) A cancellation shall not take effect until after the expiration of 3 months from the date on which the cancellation is published in the Gazette.

(7) During the 3 months between the publication and the effective date of the cancellation, the council of the stock exchange and the Board of the clearing and settlement services shall take steps to wind up the business of the stock exchange and clearing and settlement services.

81. (1) The Commission may permit a holder of a dealer's <sup>Interim</sup> licence to establish and maintain an interim stock exchange with such modification as the Commission may approve. <sub>stock exchange</sub>

(2) Where an interim stock exchange receives approval under subsection (1), its management and operation shall be assumed by the approved stock exchange and the assets and liabilities of the interim stock exchange shall be vested in the approved stock exchange.

(3) The Minister may by statutory instrument make rules for ensuring orderly and fair trading in securities on an interim stock exchange and the protection of investors.

Amending  
rules.

82. (1) Where a stock exchange or clearing and settlement services proposes to amend listing rules of the stock exchange or rules of the clearing and settlement services, it shall forward a written notice of the proposed amendment to the Commission for approval.

(2) Within 7 days after receipt of the written notice referred to in subsection (1), the Commission shall specify in a written notice to the stock exchange or clearing and settlement services whether it approves the amendment, or disapproves the whole or any specified part of the amendment.

(3) If the Commission considers it necessary for the protection of investors, the Commission shall amend the rules of a stock exchange or clearing and settlement services after consultations with the Council of a stock exchange or Board of a clearing and settlement services.

Assistance  
to the  
Commission.

83. A stock exchange or person providing clearing and settlement services shall provide such assistance to the Commission as the Commission may reasonably require for the performance of its functions and duties including the furnishing of returns and providing information relating to the exchange's business or dealings in securities or any other specified information required by the Commission.

Disciplinary

84. (1) Where a stock exchange reprimands, fines, suspends, expels or takes disciplinary action against a member of a stock exchange, it shall, within 7 days, give to the Commission, written particulars of the name of the member, the reason for and nature of the action taken, the amount of the fine if any and the period of suspension if any.

(2) The Commission may review any disciplinary action taken by a stock exchange under subsection (2) and may affirm or set aside a decision of a stock exchange after giving the member and the stock exchange an opportunity to be heard.

(3) Nothing in this section shall preclude the Commission from suspending, expelling or disciplining a member of a Stock Exchange in a case where a stock exchange fails to act against a member of the stock exchange but the Commission shall give the member and the stock exchange an opportunity to be heard before taking any disciplinary action.

(4) Any person who is aggrieved by the decision of a stock exchange or the Commission under this section may appeal to the Securities Tribunal within 1 month after he is notified.

(5) The decision of the Securities Tribunal shall be final.

85. (1) Where a person who is under an obligation to comply with, observe, enforce or give effect to the rules of a stock exchange fails in performing the duty, the Commission shall, on the application of a stock exchange or a person aggrieved by the failure, request the High Court to make an order, after giving the person against whom the order is sought an opportunity to be heard, giving direction to that person to perform the duty. Enforcement of rules.

(2) For the purpose of subsection (1) -

(a) a body corporate that has been admitted to any official list of a stock exchange and has not been removed from that official list; or

(b) a person associated with a body corporate that has been admitted to any official list of a stock exchange and has not been removed from that official list,

shall be under an obligation to comply with, observe and give effect to the rules of that stock exchange.

86. (1) Where it appears to be in the public interest, the Commission may issue directions to a stock exchange or to the operator of a clearing and settlement facility regarding - Directions to stock exchange.

- (a) trading on or through the facilities of that stock exchange or any security listed on that stock exchange;
- (b) the manner in which a stock exchange or clearing and settlement facility carries on its business, including the manner of reporting off-market purchases;
- (c) the management of the stock exchange including the removal of the management or members of the Council of the stock exchange and the appointment in their place of persons designated by the Commission; or
- (d) any other matter which the Commission considers necessary for the effective administration of this Act and of the stock exchange or the clearing and settlement facility.

(2) Every stock exchange or the person providing clearing and settlement facility shall comply with the directions under subsection (1).

(3) A stock exchange or operator of a clearing and settlement facility which without reasonable excuse fails or refuses to comply with a direction given under subsection (1), shall be liable to an administrative fine of not less than Le 5,000,000,00 imposed by the Commission for each day the non-compliance continues.

(4) A stock exchange or operator of a clearing and settlement facility that is aggrieved by any direction of the Commission under subsection (1) or the imposition of an administrative fine under subsection (3) may appeal to the Securities Tribunal within 30 days of the date of the direction.

(5) Where the Commission is satisfied that an executive-officer of a stock exchange or operator of a clearing and settlement facility has-

- (a) intentionally contravened this Act or any Regulations made under it or the rules of a stock exchange; or
- (b) without reasonable justification or excuse, failed to enforce compliance with a provision by a member of the stock exchange or a person associated with that member,

the Commission may, if it thinks necessary, in the public interest or for the protection of investors and after giving the executive-officer an opportunity to be heard and where appropriate after consulting the stock exchange, direct by notice in writing that -

- (a) the executive-officer of the stock exchange or operator of a clearing and settlement facility be removed from office or employment;
- (b) the executive-officer of the stock exchange and the operator of a clearing and settlement facility shall comply with the direction; or
- (c) the executive-officer of the stock exchange or operator of a clearing and settlement facility be censured.

87. (1) Notwithstanding section 86, where the Commission is of the opinion that it is necessary to prohibit trading in particular securities of a body corporate on the stock market of a stock exchange in order to protect the interest of the public, the Commission may give notice in writing to the stock exchange- Prohibition of trade.

- (a) stating that it has formed that opinion and setting out its reasons directing the stock exchange to stop trading in the securities to which the notice relates; and
- (b) in a case of urgency, prohibit trading in those securities on that stock market during a period not exceeding 14 days as may be specified in the notice.

(2) If after receipt of a notice under paragraph (a) of subsection (1), the stock exchange does not take action to prevent trading in the securities to which the notice relates on the stock market of the stock exchange and the Commission is still of the opinion that it is necessary to prohibit trading in those securities on that stock market, the Commission may, by notice in writing to the stock exchange, prohibit trading in those securities on that stock market during a period not exceeding 14 days as may be specified in the notice.

(3) Where the Commission gives notice to a stock exchange under subsection (2), the Commission shall -

- (a) at the same time send a copy of the notice to the body corporate together with a statement setting out the reasons for the giving of the notice; and
- (b) as soon as practicable furnish to the Securities Tribunal a written report setting out the reasons for the giving of the notice and send a copy of the report to the stock exchange.

(4) Where the Commission gives a notice to a stock exchange under subsection (2), the stock exchange may request the Commission in writing to refer the matter to the Securities Tribunal.

(5) Where a request is made under subsection (4), the Commission shall refer the matter to the Securities Tribunal which may if it thinks fit direct the Commission to revoke the notice or confirm the prohibition imposed by the Commission.

(6) The decision of the Securities Tribunal under subsection (5) shall be final.

(7) A stock exchange which permits trading in securities on the stock market of the stock exchange in contravention of a notice under subsection (2) commits an offence and shall be liable on conviction to a fine of not less than Le. 50,000,000.00.

88. (1) Subject to subsections (2) and (3), the Commission may after consultation with an approved stock exchange, order that the stock exchange be closed for transaction or dealings in securities for not more than 3 days. Closure of trading.

(2) The Commission may make an order under subsection (1), on the grounds that, in the opinion of the Commission, the orderly transaction of business on the stock exchange is likely to be adversely affected due to -

- (a) an emergency or natural disaster in Sierra Leone; or
- (b) an economic or financial crisis whether in Sierra Leone or elsewhere.

(3) An order made under subsection (1), may be renewed for a further period of not more than 5 trading days.

(4) A dealer, broker or representative who deals in securities listed on a stock exchange while an order under subsection (1) or (3) is in force commits an offence and shall be liable on conviction to a fine of not less than Le. 30,000,000.00.

(5) Where the Commission issues an order under subsection (1) or (3), notice of the order shall be published in the Gazette and in 2 daily newspapers in wide circulation in Sierra Leone.

Records etc. 89. (1) Every approved stock exchange and every person providing clearing and settlement services shall keep or cause to be kept such records or information in sufficient details, whether the records or information are maintained in electronic form or manual form in order to show particulars of every bid or offer made or bargain struck on the exchange.

(2) An approved stock exchange shall keep records showing the business of trading in securities including daily, weekly, monthly, quarterly and annual transactions and the record or information shall be subject to inspection at all reasonable times by the Commission.

(3) The records referred to in this section shall be kept for 7 years from the date of the transaction to which they relate.

(4) Any stock exchange or operator of a depository, clearance and settlement facility that fails to comply with this section commits an offence and shall be liable on conviction to a fine of not less than Le. 20,000,000,00.

#### PART X- MARKET ABUSES

False trading. 90. (1) A person who creates or causes to be created, a false or misleading appearance of active trading in securities on a stock exchange commits an offence and shall be liable on conviction to a fine of not less than Le. 100,000,000,00 and imprisonment for a term not less than 8 years.

(2) A person who purchases or sells securities that do not involve a change in the beneficial ownership of the securities or causes fluctuations in the market price of securities commits an offence and shall be liable on conviction to a fine of not less than Le. 75,000,000,00 and imprisonment for a term not less than 6 years.

(3) Without prejudice to the general effect of subsection (1), any person who -

(a) effects, takes part or carries out whether directly or indirectly, a transaction of sale or purchase of securities being a transaction that does not involve a change in the beneficial ownership of the securities; or

(b) makes or causes to be made, an offer to sell or purchase securities at a specified price, where he has made or caused to be made or proposes to make or knows that a person associated with him has made or caused to be made or proposes to make an offer to sell or purchase the same number or substantially same number of securities at a price that is substantially the same as the specified price,

commits an offence and shall be liable on conviction to a fine of not less than Le. 50,000,000,00 or to imprisonment, for a term not less than 5 years.

(4) A purchase or sale of securities shall not involve a change in the beneficial ownership for the purpose of this section if a person who had an interest in the securities before the purchase or sale or a person associated with such person acquired an interest in the securities after the purchase or sale.

(5) In a prosecution for an offence under subsection (2), it shall be a defence if the defendant establishes that the purpose for which he purchased or sold the securities was not or did not include the purpose of creating a false or misleading appearance on the market price of securities.

(6) A transaction of sale or purchase of securities referred to in paragraph (a) of subsection (3) includes-

(a) the making of an offer to sell or purchase securities; and

- (b) the making of an invitation, however expressed that expressly or impliedly invites a person to offer to sell or purchase securities.

Manipulation.

91. (1) A person who, with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate or effects, takes part in, is concerned in or carries out either directly or indirectly, two or more transactions in securities of a body corporate that have or are likely to have the effect of raising, lowering, maintaining or stabilising the price of securities of the body corporate on a stock exchange, commits an offence and shall be liable on conviction to a fine of not less than Le. 50,000,000,00 or to imprisonment, for a term not exceeding 5 years.

(2) A transaction in securities of a body corporate referred to in subsection (1) includes -

- (a) the making of an offer to sell or purchase the securities of the body corporate; and
- (b) the making of an invitation that expressly or impliedly invites a person to offer to sell or purchase the securities of the body corporate.

Misleading statements.

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

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

93. (1) A person who-

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

Fraudulently inducing persons.

induces or attempts to induce another person to deal in securities commits an offence and shall be liable on conviction to a fine of not less than Le. 30,000,000,00 or to imprisonment, for a term of not less than 4 years.

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

94. (1) A person who circulates, disseminates, authorises or is concerned in the circulation or dissemination of any statement or information to which subsection (2) applies commits an offence and shall be liable on conviction to a fine of not less than Le.30,000,000,00 or to imprisonment, for a term not less than 4 years.

Dissemination of information.

(2) This subsection applies to -

- (a) where the statement or information is to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained because of any transaction entered into or other act or thing done in relation to securities of that body corporate or of a body corporate that is related to that body corporate;
- (b) any person circulating or disseminating a statement or information or a person associated with the person who has entered into any such transaction or done any act or thing; and
- (c) the person circulating or disseminating a statement or information has received or expects to receive directly or indirectly any consideration or benefit for circulating, disseminating or authorising or being concerned in the circulation or dissemination of the statement or information.

Manipulative and deceptive devices.

95. A person shall not whether directly or indirectly regarding purchase or sale of securities -

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

96. (1) For the purpose of this section -

Insider dealing.

"information" includes-

- (a) matters of supposition and other matters that are insufficiently definite to warrant their being made known to the public;
- (b) matters relating to intentions or likely intentions of persons;
- (c) matters relating to negotiations or proposals on activities of a relevant entity or dealings in securities;
- (d) matters relating to the financial performance of any relevant entity; and
- (e) information that a person proposes to enter into or has previously entered into one or more transactions or agreements on securities or has prepared or proposes to issue a statement on securities.

"information generally available" means information that has been made known in a manner that is likely to bring it to the attention of reasonable persons who invest in securities of a kind whose price or value might be affected by the information;

"insider" means a person who is connected with an issuer;

"materially affect the price or value of securities" means information that would tend on becoming available to influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of or return the securities or enter into an agreement with a view to acquire, dispose or retain the securities;

"officers' in relation to an issuer or other body corporate includes-

- (a) a director, secretary, executive-officer or employee of the issuer or other body corporate;
- (b) a receiver or receivers and manager of property of the issuer or other body corporate;
- (c) a liquidator of the issuer or body corporate;
- (d) a trustee or other person administering a compromise or arrangement made between the issuer or body corporate and another person.

(2) For the purpose of this section a person is connected with an issuer if being an individual-

- (a) he is an officer of that issuer or of a related body corporate;
- (b) he is a substantial shareholder in that issuer or in a related body corporate;
- (c) he occupies a position that may reasonably be expected to give him access to information of a kind to which subsections (1) and (2) apply because of -
  - (i) any professional or business relationship existing between himself or his employer or body corporate of which he is an officer and that body corporate and related body corporate;

- (ii) his being an officer or a substantial shareholder in that issuer or in a related body corporate.

(3) A person who is or has been an insider of an issuer 6 months prior to a specific deal shall not deal in any securities of any other issuer if he is in possession of information that-

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

(4) Where a person is in possession of information under subsection (3) but he is not precluded from dealing in the securities, he shall not deal in the securities if -

- (a) he has obtained the information directly from another person and is aware or ought reasonably to be aware of facts or circumstances by virtue of which that other person is himself precluded by subsection (3) from dealing in the securities; or
- (b) when the information was obtained he was associated with that other person or is a close relative of that person or had with him an arrangement for the communication of information of a kind to which the subsections apply with a view to dealing in securities by himself or with that other person.

(5) No person shall when he is precluded by subsection (3) or (4) from dealing in securities-

- (a) cause or procure any other person to deal in securities; or
- (b) communicate that information to any other person if -
  - (i) trading in those securities is permitted on a stock exchange whether within or outside Sierra Leone; and
  - (ii) he knows or ought reasonably to know, that the other person will make use of the information for the purpose of dealing, causing or procuring another person to deal in the securities.

(6) Without prejudice to subsection (5), but subject to subsections (7) and (8), no body corporate shall deal in securities at a time when an officer of that body corporate is precluded by subsection (3),(4) or (5) from dealing in securities.

(7) A body corporate shall not be precluded from entering into a transaction at any time because of information in the possession of an officer of that body corporate if -

- (a) the decision to enter into the transaction was taken on its behalf by a person other than that officer;
- (b) it had in operation at that time, arrangements to ensure that the information was not communicated to any person and that no advice with respect to the transaction was given to him by a person in possession of the information ; and
- (c) the information was not communicated and the advice was not given.

(8) A body corporate is not precluded from dealing in securities of another body corporate because of information in possession of its officers which was obtained by the officer in the course of his duties, but relates to proposed dealings by the first mentioned body corporate in securities of the other body corporate.

(9) This section does not preclude the holder of a broker or dealer's licence from dealing in securities, rights or interests in securities of an issuer, where the securities, rights or interests are permitted by a stock exchange to be traded on the stock market of that stock exchange if -

- (a) the holder of the licence enters into the transaction concerned as an agent for another person in accordance with a specific instruction to effect that transaction;
- (b) the holder of the licence has not given any advice to the other person in relation to dealing in securities, rights or interests in securities of that issuer that are included in the same class as the previous securities; and
- (c) the other person is not associated with the holder of the licence.

(10) Where prosecution is instituted against a person for entering into a transaction whilst in possession of certain information contrary to this section, it shall be a defence if the person satisfies the court that the other party to the transaction knew or ought reasonably to have known the information before entering into the transaction.

97. (1) A person who commits an offence under this Part shall be liable on conviction to a fine of not less than Le.100,000,000,00 or to imprisonment, for this a term not less than 10 years.

Offences under this part.

(2) In any proceedings against a person under subsection (1), it shall be a defence for the accused to prove that he had reasonable grounds for believing that another person was charged with the duty of ensuring compliance with this Act or with the duty of ensuring that the statements were accurate and that person was competent and in a position to discharge that duty.

(3) A person convicted of an offence under this Part shall be liable and may on conviction be directed by the court to pay compensation to any person who in a transaction for the purchase or sale of securities entered into with him or with a person acting for or on his behalf, suffers loss because of the difference between the price at which the securities were dealt in and the price at which they might have been dealt in at the time when the transaction took place if the contravention had not occurred.

(4) The amount of compensation for which a person is liable under subsection (3) shall be the amount of the loss sustained by the person claiming the compensation.

(5) Where the Commission can prove in a civil suit brought by it before the High Court that a person has contravened any provision of this Part, that person shall be liable to pay to the Commission -

- (a) the amount by which the person profited or the loss which he avoided as a result of the contravention;
- (b) a punitive or compensatory penalty as may be determined by the High Court but not exceeding 3 times the amount of profit gained or the amount of loss avoided as a result of the contravention;
- (c) interest; and

(d) costs of the suit as may be determined by the High Court.

(6) Any amount recovered by the Commission under subsection (5) shall be applied as follows-

- (a) as a first charge against the amount, the Commission shall be entitled to reimbursement of all expenses reasonably incurred by it in bringing the proceedings and in administering the distributions of the proceeds from the civil proceedings;
- (b) the Commission shall be entitled to a sum equal to 10% of the gross amount so recovered less any amount of costs ordered and actually recovered from the other party prior to final distribution of the recovered amount;
- (c) the Commission shall distribute the balance first to persons who have suffered loss referred to in subsections (3) and (4) to the extent required to compensate them for any losses incurred by them taking into account any sums awarded to them under subsection (3) and any residual sum shall be paid by the Commission into the Investor Protection Fund referred to under section 124.

(7) Any amount not claimed within 5 years from the date of the first distribution of payments to the persons referred to in paragraph (c) of subsection (6), shall accrue to the Investor Protection Fund provided that the Commission shall refund any unclaimed compensation to the claimant entitled to it or if the claimant is dead, his legal representative if a request is made, with satisfactory evidence to the Commission at any time after the 5 years period.

(8) Where harm has been done to the market as a whole, the liability shall be the amount of illegal gains received or the loss averted as a result of the illegal action as determined by the High Court.

(9) To the extent that a person found guilty of an offence under subsection (1) profited by that offence but those harmed cannot reasonably and practicably be determined, the sums awarded under subsections (3) and (5) shall be paid into the Investor Protection Fund.

(10) An action under subsection (3) and subsection (5) for the recovery of a loss shall not be commenced after the expiration of 3 years after the date of completion of the transaction in which the loss occurred.

(11) Nothing in subsection (3) affects any liability that a person may incur under any other law.

#### PART XI-DISCIPLINARY PROVISIONS

Public statements.

98. (1) Where the Commission determines in proceedings under section 100 that a licenced person has contravened this Act, the Commission may publish a statement stating any action that the Commission may have taken regarding the contravention.

(2) Before publishing a statement under subsection (1), the Commission shall give the person concerned a written notice of the proposed statement and the reasons for which it proposes to act.

(3) Where the reasons stated in the notice deal specifically with matters which -

- (a) refer to a person identified in the notice other than the person who is or was the licensed person; and

- (b) are in the opinion of the Commission prejudicial to that person in any office or employment,

the Commission shall serve a copy of the notice on that other person unless it considers it impracticable to do so.

(4) A person on whom a notice is served pursuant to subsection (2) may make written representations to the Commission within 21 days after the service.

(5) The Commission after considering any representation made pursuant to subsection (4), shall give any person on whom notice was served, a written notice that the statement is or is not to be published and if it is to be published, the Commission shall send a copy of the statement to the persons after publication.

(7) A person on whom notice is served under subsection (5) who is aggrieved by the decision of the Commission may appeal to the Securities Tribunal within 14 days of the decision.

99. (1) This section shall apply to complaints concerning an act or omission which if proven shall - Hearing of complaints.

- (a) be in breach of any requirement imposed by or under this Act or under any Act regulating collective investment schemes; and

- (b) not constitute a criminal offence.

(2) A complaint to which this section applies shall be brought before the Complaints Committee referred to in subsection (2) of section 8 and may not be the subject of civil proceedings before any court or be the subject of determination under an agreement for arbitration or other means of adjudication.

(3) A complaint to which this section applies shall be submitted in writing to the Director-General who shall refer the complaint to the Complaints Committee referred to in subsection (2) of section 8, within 14 days of receipt of the complaints.

(4) The Complaints Committee upon receipt of a complaint shall examine the complaint and require any person who it considers may assist it to appear before it and reach a decision-

- (a) upholding the complaint and directing remedial action by way of directing compliance with the requirements of this Act and where relevant, awarding compensation for any loss suffered by the complainant arising from the breach of the requirement that the Complaints Committee has held, but not less than Le. 10,000,000,00-
- (b) dismissing the complaints; or
- (c) recommending that the complaint be referred by the Commission to the Securities Tribunal for determination.

(5) The Complaints Committee shall give a fair hearing to all persons who appear before it under subsection (4) and in doing so, may direct the parties to produce for the purposes of the hearing, all relevant information and shall be guided by the principles of natural justice but shall determine the procedure for the hearing except as otherwise provided in this Part.

(6) Each party to any proceedings under this section shall bear its own costs.

(7) A determination by the Complaints Committee shall be referred to the Commission which shall within 30 days of the referral -

- (a) approve the determination of the Complaints Committee;
- (b) modify the determination of the Complaints Committee;
- (c) remit the complaint to the Complaints Committee for further consideration ; or
- (d) refer the complaint to the Securities Tribunal for determination.

(8) A person dissatisfied with a determination by the Commission under subsection (5), may appeal to the Securities Tribunal within 14 days of the date the determination is notified to him.

100. (1) Where as a result of any information received by the Commission or any investigation conducted by or for it pursuant to this Act or as a result of any reference made to the Commission by an approved stock exchange or from any foreign regulator or body or other source, the Commission has reason to suspect that there has been some contravention of or failure on the part of any person to comply with this Act or with any Regulations made under this Act or with any rules issued by the Commission or an approved stock exchange, the Commission may-

Conducting disciplinary inquiries.

- (a) refer the matter to the Securities Tribunal for further inquiry and action by the Securities Tribunal determining the complaint;
- (b) appoint a committee under section 8 or refer the matter to the Complaints Committee to make further inquiry into the matter; or
- (c) apply to the High Court under sections 75, 85, or 97 for relevant orders.

(2) Where the Commission arranges for further inquiry by a committee under section 8 or the Complaints Committee, if the committee or Complaints Committee is of the opinion after inquiring into the matter, that there has been a failure by any person to comply with any of the matters of non-compliance put in issue to that person, it may do any one or more of the following-

- (a) censure that person and in the case of a body corporate including an approved stock exchange, any director of that body corporate;
- (b) publish a statement under section 98 on the matter;
- (c) give directions to the person concerned (which, in the case of an approved stock exchange, shall be given under section 81 requiring the action to be taken as it considers necessary in the interest of persons affected or in the public interest to remedy any non-compliance or contravention;
- (d) impose an administrative fine not less than Le. 20,000,000,00 on the person who is found to have so failed to comply and in the case of a body corporate including an approved stock exchange any director of that body corporate who is found to be knowingly a party to that contravention or non-compliance;
- (e) where that person who is the holder of a Licence under this Act makes an order suspending or revoking the licence of that person on terms and conditions as it may consider fit;

- (f) refer the matter to the Attorney-General for prosecution or other action before the High Court;
- (g) make application to the High Court for relevant orders; and
- (h) take any other action that the Commission is empowered to take under this Act or under Regulations made under this Act.

(3) Before reaching an opinion under subsection (2) in relation to any person upon whom action is proposed to be taken under that subsection, the Committee or Complaints Committee shall provide an opportunity for that person to appear before it on their own behalf or if that person so requests, by counsel.

(4) The committee of the Commission or the Complaints Committee conducting an investigation under this section may conduct hearings for the purpose of receiving evidence on any matter and may, by notice in writing served on that person, require the attendance by that person at such hearing to give evidence on any matter that the committee or Complaint Committee believes is able to assist it in its investigation..

(5) During the hearing referred to in subsection (4), evidence shall be taken under oath and any authorised person may administer the oath.

(6) Any person aggrieved by the decision of the committee or Complaints Committee under subsection (2), may appeal to the Securities Tribunal within 21 days of the date of the decision.

(7) On any appeal under subsection (5), the status quo of any matter or activity which is the subject of the appeal shall be maintained until the appeal is determined.

Establishment  
of Securities  
Tribunal.

101. (1) There is hereby established a body to be known as the Securities Tribunal.

(2) The Securities Tribunal shall be made up of the following members-

- (a) the Chairman who shall be a legal practitioner of not less than 10 years standing;
- (b) five other persons with proven knowledge and experience in any area related to the securities sector.

(3) The Chairman and other members of the Securities Tribunal shall be appointed by the Minister.

(4) The Chairman and other members of the Securities Tribunal shall be paid fees, allowances and expenses as the Minister may determine.

Functions of  
Tribunal.

102. The Securities Tribunal shall hear and determine the following matters-

- (a) any disciplinary action referred to the Tribunal by the Commission relating to the conduct of any stock exchange or any of its officers or any licensed persons;
- (b) any complaint made to the Commission by an investor in relation to the conduct of any licensed person and referred by the Commission to the Tribunal;
- (c) any inquiry into the conduct of any market participant in relation to any activity affecting the securities market which is referred to the Tribunal by the Commission;

- (d) any appeal against a determination of the Commission under subsection (4) of section 86, subsection (4) of section 87, subsection (7) of section 98, subsection (6) of section 100, or Regulations made under this Act.

103. (1) The Tribunal may request production of books under section 105 as if it were authorised by the Commission for the purposes of that section. Powers of Tribunal.

(2) Subsections (2), (3) and (4) of section 100 shall in so far as they are applicable apply to the Tribunal as if it were authorised under this section in the same way as they apply to the Commission.

(3) The Tribunal may conduct hearings for the purpose of receiving evidence on any matter before it and may at such hearings take evidence on oath and for that purpose any member of the Tribunal or any officer or employee of the Commission in attendance at that meeting may administer the oath.

(4) Subject to subsection (5) and without prejudice to the Anti-Money Laundering and Combating of Financing of Terrorism Act, 2012, no court or other person shall be entitled to require any member of the Tribunal or any officer or employee of the Commission or any other person present at any hearing conducted by the Tribunal, to divulge or communicate any information furnished or obtained or any document produced or tendered or any evidence given at any such hearing.

(5) Notwithstanding subsection (4), information, documents and evidence may be disclosed for the purposes of paragraph (a) or (b) of subsection (3) of section 116 as if the reference in the paragraph to the Commission were a reference to the Tribunal.

(6) Anything said or any information furnished or any document produced or tendered, or any evidence given by any person to the Tribunal shall be privileged in the same manner as if that statement, document or evidence were made, furnished, produced or given in proceedings in a court.

(7) Any interested party may be represented before the Tribunal by counsel or by any person whom the Tribunal may admit to be heard on behalf of such party.

(8) In the case of any matter before it other than an appeal, the Tribunal after inquiring into the matter before it and providing an opportunity for any person suspected on non-compliance to be heard and to make representations, may make findings and reach a decision on the matter before it and do any one of the following -

- (a) censure the person and in the case of a body corporate including an approved stock exchange that is found to have failed to comply with any requirements in issue before the Tribunal, any director of that body corporate and if it so determines publish its decision on the matter;
- (b) give directions to the person concerned requiring the action to be taken as the Tribunal considers necessary in the interest of the persons affected and in the public interest to remedy any non-compliance or contravention;
- (c) impose a fine of not less than Le 20,000,000,00;
- (d) where the person is the holder of a licence under this Act make an order suspending or revoking the licence of that person on terms and conditions as the Tribunal may think fit;
- (e) refer the matter to the Attorney-General for prosecution or other action before the Court;
- (f) refer the matter to the Commission for it to make application to the Court under section 114.

(9) The Tribunal shall have power in the case of an appeal to award costs for any proceedings before it.

(10) Where the Tribunal orders any fine or monetary payment to be made or awards cost, it shall on application to it, issue a certificate stating the amount that is the subject of the order.

(11) Every certificate under subsection (10) may be filed in Court by the person in whose favour it is made and upon being filed, shall be deemed to be an order of Court and enforced accordingly.

(12) The Minister may make rules governing the procedure of the Tribunal including fees to be paid to the Tribunal and any scale of costs in relation to costs awarded by the Tribunal.

104. Any person aggrieved by a decision of the Tribunal may appeal on a point of law to the High Court within 30 days of the decision of the Tribunal. Appeals.

#### PART XII---INVESTIGATION AND OTHER RELATED MATTERS

105. (1) The Commission may at any time without notice enter any premises owned, controlled or occupied by a regulated person and examine any book that may be found on the premises or in the possession of the regulated person that is related to the business of the regulated person or in any way related to the matters listed in subsection (6). Production of books etc.

(2) The Commission may require a licensed person or any key person to provide an explanation relevant to the matters listed in subsection (6).

(3) The Commission may require a licensed person or stock exchange to provide regular reports as the Commission considers appropriate.

(4) The Commission may by notice in writing given to a regulated person require any of the following key persons of that

regulated person to -

- (a) provide specified information or information of a specified description;
- (b) produce specified documents or documents of a specified description; or
- (c) attend at such place and time as may be specified in the notice and answer questions or make a statement which the Commission or duly authorised officer or agent of the Commission reasonably requires the person to answer or to make .

(5) The information or documents to be provided under subsection (3) or (4) shall be provided or produced before the end of a reasonable period as may be specified and at a specified place.

(6) This section applies to books or questions relating to -

- (a) the business or affairs of the licensee or former licensee;
- (b) the business of any key person of the licensee or former licensee;
- (c) the integrity, competence, financial standing or organisation of any regulated person or of any person who is or was a controller, beneficial owner, director, manager, employee or associate of the regulated persons;
- (d) the compliance by persons referred to in paragraphs (a) to (c) of this subsection, any Act regulating Collective investment schemes, any statutory instrument, a condition of any grant of a licence, a direction given under this Act or any regulation whose administration for which the Commission may be wholly or partly responsible; or

- (e) any other matter about which the Commission may reasonably require information for the performance of its functions under this Act.

(7) The Commission may require any information provided under this section to be provided in a form as it may reasonably require.

(8) The Commission may require-

- (a) any information provided whether in a document or otherwise to be verified in a manner as it may reasonably require; or
- (b) any document produced to be authenticated in a manner as it may reasonably require.

(9) Where books are produced under this section, the Commission may-

- (a) take copies of them and may retain them provided that they permit the person supplying them to have access to them upon giving reasonable notice and specification of the books;
- (b) instruct an accountant or other expert to examine the books or any of them and report to the Commission and for that purpose the books may be delivered to the accountant or expert for examination.

(10) Where books required under this section are not produced, the Commission may require the person who should have produced them to -

- (a) state to the best of his knowledge and belief where the books may be found;

- (b) identify the person who, to the best of his knowledge and belief, last had custody of the books and where he may be found; and
- (c) show why the books cannot be produced

(11) For the purpose of this section-

- (a) "officer: means an officer of the Commission and includes a member of the Commission's staff or agent of the Commission;
- (b) an associate of a regulated person referred to in the definition of "key person" includes-
  - (i) a member of the council of a stock exchange;
  - (ii) a nominee of, or any person controlled by a regulated person;
  - (iii) where the regulated person is a partnership, any partner including a corporate partner;

(12) A person who without reasonable excuse fails to comply with this section or obstructs or hinders the Commission in the exercise of his powers under this section commits an offence and shall be liable on conviction to a fine of not less than Le 20,000,000,00.

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

Investigation 106. (1) The Commission may appoint the Complaints Committee referred to under subsection (2) of section 8 or a committee of competent persons comprising members of the Commission and non-members to investigate into -

- (a) suspected contravention where it has reasonable grounds for believing that there has been a contravention of this Act, regulations made under this Act, licence conditions, any Act regulating collective investment scheme or any Act or Regulations for whose administration the Commission is wholly or partly responsible;
- (b) the nature, conduct or state of a regulated person's business or any particular aspect of it where it has reasonable grounds for suspecting that it may be necessary to prohibit trading in securities of or made available by a body corporate pursuant to section 87;
- (c) any dealing in relevant securities where there are reasonable grounds for suspecting that a regulated person or key person may not be a fit and proper person to continue to be a regulated person or key person ;
- (d) any advice, report or analysis given by a licensed person that may be relevant to the matter under investigation in the interest of persons who have transacted or may transact business with the licensee;
- (e) a regulated person or key person's integrity, competence, financial position or organisation in order to protect the integrity of the capital market;
- (f) a matter of request by the foreign regulatory authority in order to assist a foreign regulatory authority;

- (g) any other matter that the Commission reasonably requires to be investigated in order to fulfil its functions under this Act or any Act regulating collective investment schemes in Sierra Leone or any other Act for whose administration it is wholly or partly responsible in order to fulfil its functions under this Act.

(2) It shall be the duty of any person who appears to be in possession of relevant information -

- (a) to provide to the persons appointed under subsection (1), all documents relating to the matter under investigation which are in his custody or power within a required time and place as they may require;
- (b) to state in answer to the persons appointed under subsection (1) to the best of his knowledge and belief where the books may be found or to state the reasons why the books cannot be found; if the documents are not produced or are claimed not to be in that person's custody or power;
- (c) to attend before them at such time and place as they may require and to answer questions or make a statement which they may reasonably require the person to answer or to make for the purposes of the investigation; and
- (d) otherwise to give all assistance in connection with the investigation which the person is reasonably able to give.

(3) The persons appointed under subsection (1) may retain or take copies of or extracts from any document provided to them under paragraph (a) of subsection (2).

(4) For the purpose of exercising the person's power under this section, a person appointed under subsection (1) may enter any premises where he has reasonable grounds for believing that relevant information may be kept, but he shall not do so without prior notice in writing, unless he has reasonable cause to believe that if the notice is given, any document required under this section would be removed, tampered with or destroyed.

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

(6) Any person who-

- (a) without reasonable excuse fails to provide any document which it is his duty to provide under subsection (2);
- (b) without reasonable excuse fails to assist or attend before a person appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by the person so appointed regarding the investigation; or
- (d) obstructs a person appointed under subsection (1) in the performance of his duties;

commits an offence and shall be liable on conviction to a fine of not less than Le 20,000,000,00.

(7) Where any person from whom documents are required to be taken or retained under subsection (3) claims a lien on any of the documents, the provision shall be without prejudice to the lien.

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

Power to search premises.

107. (1) The Commission may at any time and without prior notice, if it has reason to believe that there are on a premises any books which have been directed by the Commission to be produced and which have not been produced in compliance with the direction, may with the assistance of an officer of the Commission and any other person instructed by the Commission as an expert -

- (a) use force as is necessary and reasonable to enter any premises that the Commission has reason to believe the books are located;
- (b) break open any cupboard, drawer, container or receptacle whether fixture or not to search for the books;
- (c) seize or make a copy of any book;
- (d) question any person who is present on the premises or the directors, officers, members, employees or partners of any person conducting business on the premises where the books are located;
- (e) direct that the premises or any part of it shall be left undisturbed until it is necessary to search the premises for any books;
- (f) issue a notice in writing addressed and delivered to any person who has control over the custody of the books to deliver the books to an officer of the Commission at the time and place referred to in the notice; and
- (g) examine any book and seek from any person referred to in paragraph (d), an explanation regarding any entry in the book.

(2) The officer of the Commission referred to in subsection (1) shall exhibit to the person, written authorisation referred to in that subsection at the request of any person on the premises affected by the entry.

(3) No person shall -

- (a) hinder or obstruct an officer under subsection (1), or persons assisting him in the performance of his functions;
- (b) refuse or fail to comply with any request made by an officer of the Commission referred to in subsection (1) in the performance of his functions;
- (c) refuse or fail to answer any questions which the officer of the Commission or any expert instructed by the Commission directs at that person in the performance of that person's functions;
- (d) wilfully furnish false or misleading information to an officer of the Commission or expert instructed by the Commission; or
- (e) falsely claim or give himself out to be an officer of the Commission.

(4) For the purpose of this section "premises" includes any building or structure or part of a building or structure, whether above or below the surface of the land or water or any vehicle, vessel or aircraft.

(5) Any person who contravenes subsection (3) commits an offence and shall be liable on conviction to a fine of not less than Le 20,000,000,00.

Incriminating statement.

108. (1) A person shall not be excused for failing to answer any question posed to him during an investigation under section 106 or to provide a statement explaining any matter relating to the compilation of any books or any answer or matter requested of him under sections 106 on the grounds that an answer or statement made by him might tend to incriminate him.

(2) Where the person claims before making a statement required of him that the statement might tend to incriminate him, the statement provided in answer to the request shall not be admissible in evidence against him in any criminal proceedings other than proceedings under sections 91, 92 or 93 of this Act.

(3) Subject to subsection (2), a statement made by a person in compliance with a requirement under sections 92, 93 or 94 may be used in evidence in any criminal or civil proceedings against the person.

Offences.

109. A person who -

- (a) without reasonable excuse refuses or fails to comply with a direction or notice given under sections 91, 92 or 93;
- (b) furnishes information or makes a statement that is false or misleading in a material particular for the purposes of sections 91, 92 or 93; or
- (c) without reasonable excuse obstructs or hinders the Commission or any person in the exercise of a power under sections 91, 92 or 93,

commits an offence and shall be liable on conviction to a fine of not less than Le. 15,000,000,00.

Copies or extracts.

110. (1) Subject to this section and section 107, a copy of or extract from a book relating to a matter specified in sections 91, 92 or 93 shall be admissible in evidence as if it was the original book.

(2) A copy of or extract from a book shall not be admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purpose of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit or statutory declaration.

111. Nothing in subsection (4) of section 100, section 102 or 103, shall compel a legal practitioner to produce a document that contains privileged communication made by him in his professional capacity or authorise the taking of any document which is in his possession but if the legal practitioner refuses to produce the document he shall be obliged to give the name and address (if he knows them) of the person to whom or on whose behalf the communication was made. Privileged Communication, etc.

112. (1) The Commission may require a broker, dealer or fund manager to disclose to it, in relation to any acquisition or disposal of securities, the name of the person from or through whom or on whose behalf the securities were acquired or disposed of and the nature of the instructions given to the broker, dealer or fund manager in respect of the acquisition or disposal, when the Commission considers it necessary for the protection of investors. Disclosure.

(2) The Commission may require a person who has acquired, held or disposed of securities to disclose to it-

- (a) whether he acquired, held or disposed of securities as a trustee for or on behalf of another person or as a nominee;
- (b) whether there is any other person who is a beneficial owner of the securities;
- (c) the name of any person on whose behalf he has acted or who is a beneficial owner of the securities; and

- (d) the nature of any instruction given to him as trustee or nominee in respect of the acquisition, holding or disposal.

(3) The Commission may require a stock exchange to disclose to it the names of the members of the stock exchange who acted in the acquisition or disposal in relation to an acquisition or disposal of securities on the stock market of that stock exchange.

(4) The information that shall be maintained for beneficial owners of securities shall be described in regulations.

(5) Any person who fails to comply with a requirement made by the Commission under this section commits an offence and shall be liable on conviction to a fine of not less than Le 15,000,000,00.

Power of entry.

113 (1) A Judge or a magistrate may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Commission-

- (a) that there are reasonable grounds for believing that an offence has been committed under this Act and that there are on any premises, documents relevant to the question of whether that offence has been committed;
- (b) or by a person appointed or authorised to exercise powers under sections 106, 107 and 108 that there are reasonable grounds for believing that there are on any premises, documents whose production has been required and which have not been produced in compliance with the requirement.

(2) A warrant issued under subsection (1) shall authorise the Commission or any other person named on it-

- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and to break open and search any cupboard, drawer, container or other receptacle whether a fixture or not on the premises;
- (c) to take possession of any documents appearing to be documents referred to in subsection (1) or to take any steps which may appear to be necessary for preserving the documents or preventing interference with them;
- (d) to take copies of any document; and
- (e) to require any person named in the warrant to provide an explanation of the document or to state where they may be found.

(3) A warrant under this section shall continue to be in force until the end of 30 days beginning with the day on which it was issued.

(4) Any document of which possession is taken under this section may be retained-

- (a) for a period of 3 months; or
- (b) if within that period, proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(5) Any person who intentionally obstructs a police officer or other person in the exercise of any rights conferred by a

warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with paragraph (e) of subsection (2) commits an offence and shall be liable on conviction to a fine of not less than Le. 20,000,000,00.

(6) In this section "document" includes information recorded in any form.

Power to  
make  
certain  
orders.

114. (1) Where on the application of -

- (a) the Commission, it appears to the Court that a person has committed an offence under this Act, or has contravened the conditions or restrictions of a licence, rules, the listing rules of a stock exchange or is about to do an act relating to dealing in securities that if done would be an offence or contravention;
- (b) a stock exchange, it appears to the Court that a person has contravened the rules or listing rules of that stock exchange,

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

- (i) in the case of persistent or continuing breaches of this Act or of the conditions or restriction of a licence or of the rules or listing rules of a stock exchange, an order restraining the person from carrying on a business of dealing in securities, acting as an investment adviser or as a representative, or from holding himself out as carrying on such business or so acting;
- (ii) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;

- (iii) an order appointing a receiver of the property of a dealer or a receiver of property that is held by a dealer for or on behalf of another person whether on trust or otherwise;
- (iv) an order declaring a contract relating to securities to be void or voidable;
- (v) for the purposes of securing compliance with any other order under this section, an order directing a person to do so or refrain from doing a specified act; or
- (vi) any order ancillary to any of the orders specified in this paragraph that are considered necessary.

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

(3) A person appointed by order of the Court under subsection (1) as a receiver of the property of a dealer or broker may-

- (a) require the dealer or broker to deliver to the receiver any property of which the receiver has been appointed to receive or to give to the receiver all information concerning that property that may reasonably be required;
- (b) acquire and take possession of any property for which he has been appointed receiver;
- (c) deal with any property that he has acquired or for which he has taken possession in any manner in which the dealer might lawfully have dealt with the property; and

- (d) exercise such other powers in respect of the property as are specified in the order.

(4) In subsections (1) and (3) "property" in relation to a dealer or broker includes money, securities and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or broker or another person in the course of or in connection with a business of dealing in securities carried out by the dealer or broker.

(5) Any person who, without reasonable excuse contravenes or fails to comply with -

- (a) an order under subsection (1) applicable to him; or
- (b) a requirement of a receiver appointed by order of the Court under subsection (1); commits an offence and shall be liable on conviction to a fine of not less than Le. 20,000,000,00.

(6) Subsection (5) shall not affect the power of the Court to punish for contempt of Court.

(7) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of an order.

Assistance to Foreign authority.

115. (1) Notwithstanding any provision to the contrary under this Act, the Commission may subject to subsection (2) provide assistance to a foreign regulatory authority in connection with any legal or regulatory requirement which the foreign regulatory authority enforces or administers by carrying out investigations of any alleged breaches of the legal or regulatory requirements or provide such other information, opinion or assistance to the foreign regulatory authority as the Commission thinks fit.

(2) The Commission shall determine whether providing assistance would be consistent with its functions or would otherwise be in the interest of maintaining the integrity of the capital market in Sierra Leone and would be in the public interest.

(3) In reaching a determination under subsection (2), the Commission shall have regard to any relevant matter including whether-

- (a) the foreign authority is a foreign regulatory authority;
- (b) the assistance provided would be used by a foreign regulatory authority in exercising its functions for a proper regulatory purpose;
- (c) the foreign regulatory authority would provide comparable assistance to the Commission;
- (d) the foreign regulatory authority is prepared to assist with the cost of the investigation;
- (e) the assistance would be relevant to the foreign regulatory authority in implementing or enforcing its laws and regulations relating to securities and derivatives;
- (f) the foreign regulatory authority would comply with any condition that the Commission may impose on the transmission of information;
- (g) the foreign regulatory authority is able to provide adequate protection to any confidential information that may be passed to it;

- (h) the provision of assistance would maintain or enhance the reputation of the Sierra Leone capital market;
- (i) criminal proceeding has already been initiated in Sierra Leone based upon the same facts and against the same persons as are the subject of the request for assistance.

(4) The Commission may make a presumption that the consideration listed in subsection (3) should be deemed to be fully and satisfactorily taken into account when assistance is provided to a foreign regulatory authority that is a signatory to a memorandum of understanding or other agreement to which the Commission is also a party and the information falls within the scope of the memorandum of understanding or agreement and any request for assistance is within the terms of any memorandum of understanding or agreement.

(5) The Commission may conduct an investigation at the request of a foreign regulatory authority or otherwise provide assistance regardless of whether or not any offence has been committed in Sierra Leone or whether any conduct under investigation would if committed in Sierra Leone, be an offence.

(6) If it considers it desirable in order to fulfil its functions or to maintain the integrity of the capital market in Sierra Leone, the Commission may exercise other powers where to do so would provide assistance to a foreign regulatory authority, including imposing a condition on a licence, revoking a licence, requiring the removal of a controller, beneficial owner, director, manager, or employee of a licensee, withdrawing approval of stock exchange and seeking an order from the court under sections 75,76, 77 and 114.

Secrecy of information.

116. (1) Subject to subsections (2) and (3), a person including a member, officer or employee of the Commission who receives information relating to the business or other affairs of any person-

- (a) under or for the purpose of this Act or any Act regulating collective investment schemes in Sierra Leone or any other Act for whose administration the Commission is wholly or partly responsible; or
- (b) directly or indirectly from a person who has so received it,

commits an offence if he discloses the information without the consent of the person to whom it relates and where paragraph (b) applies, the person from whom it was received.

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

(3) This section shall not apply to the disclosure of information where that information is disclosed-

- (a) for the purpose of enabling or assisting the Commission or any person acting on its behalf to discharge their functions under this Act or any other enactment under which they are charged with duties;
- (b) by the Commission or any person acting on its behalf to a foreign regulatory authority;
- (c) to a person showing whether or not any person is a licensee;
- (d) with a view to the investigation of a suspected offence or institution or for the purposes of any criminal proceedings whether under this Act or not;

- (e) in connection with any other proceedings arising out of this Act;
- (f) with a view to the institution of or otherwise for the purposes of any disciplinary proceedings relating to the exercise of an auditor's professional duties by an auditor of a licensee or former licensee or an accountant;
- (g) by the Commission or any person acting on its behalf to the Attorney-General, a police officer or any other law enforcement agency, being information in the possession of the Commission which may be of assistance to the Attorney-General, a police officer or other law enforcement agency in the performance of their duties provided that the Attorney-General, a police officer or other law enforcement agency may not disclose the information to any other person except where, in their discretion such disclosure is necessary to perform their duties or to assist others in the performance of their duties whether in Sierra Leone or elsewhere;
- (h) without prejudice to the generality of paragraph (a), by the Commission to the auditor of a licensee or former licensee if it appears to the Commission that disclosing the information would enable or assist the Commission to discharge the functions referred to in paragraph (a) or would otherwise be in the interest of persons who have transacted or may transact business with a licenced person;

- (i) to a qualified person if in order to enable or assist the Commission properly to discharge any of its functions under this Act, the Commission considers it necessary to seek advice from any qualified person on any matter requiring the exercise of professional skill and the disclosure appears to the Commission to be necessary to ensure that the qualified person concerned is properly informed with respect to the matter on which the person's advice is sought;
- (j) by the Commission or any person acting on its behalf to persons appointed under this Act or under any other enactment under which they exercise a function;
- (k) where disclosure is required as a result of a legal obligation including an order of the court relating to a specific item of confidential information and any general obligation to report certain matters to the appropriate authority;
- (l) where disclosure is permitted by regulation.

(4) No information shall be disclosed under paragraph (b) of subsection (3), unless the Commission or any person acting on its behalf is satisfied that the authority, person or body concerned complies with or will comply with any conditions to which the Commission or person acting on its behalf may in their discretion be subject to the disclosure.

(5) Without prejudice to the generality of subsection (1), this section shall apply to information supplied to the Commission by a foreign regulatory authority for the purposes of the Commission's functions whether under this Act or any other Act which confers duties on the Commission and information which the Commission may receive in connection with its functions under any other Act.

(6) For the purpose of paragraph (i) of subsection (3), a "qualified person" means a person who is professionally qualified and skilled to give advice on securities transactions and matters and includes a legal practitioner, accountant, auditor and valuer.

Duty to report.

117. (1) Any person who in the course of providing services to a regulated person, key person, an approved stock exchange or a company whose securities are listed on a stock exchange comes into possession of information indicating that such regulated person, stock exchange or key person is engaged in any conduct prohibited by this Act which involves fraud or dishonesty or one of the market abuse offences, shall report the matter to the Commission.

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

(3) Without derogating from the obligation to report to the Commission under subsection (1), any person who comes into possession of information indicating that any regulated person or key person is engaged in any conduct of the kind referred to under subsection (1) shall report the matter to the Commission.

(4) No action or proceeding including any criminal proceeding or administrative action in relation to a person's employment or otherwise may be taken against a person who in good faith provides information confidentially to the Commission under subsections (1) and (3).

(5) Subsections (1) and (3) shall not apply to a legal practitioner who receives information in the course of providing legal professional advice regarding compliance with this Act that is sought by the regulated person or key person in relation to the prohibited conduct concerned.

#### PART XIII -OFFENCES

Falsification of records.

118. Any key person, auditor, agent of a stock exchange or clearing and settlement facility or a dealer, broker, fund manager or an investment adviser who intentionally-

- (a) makes or cause to be made, a false entry;
- (b) omits to make an entry or causes an entry to be omitted; or
- (c) alters, abstracts, conceals or destroys an entry or wilfully causes an entry to be altered, abstracted,, concealed or destroyed in any book or report, slip, document or statement of the business affairs, transactions, conditions, assets or accounts of that stock exchange, clearing and settlement facility, dealer, broker, fund manager or investment adviser commits an offence and shall be liable on conviction to a fine of not less than Le. 50,000,000,00 or to imprisonment, for a term not exceeding 5 years.

119. (1) Any person who furnishes any information relating to any dealings in securities to the Commission, stock exchange, or a clearing and settlement facility-

False or misleading statements.

- (a) knowing it to be false or misleading in a material particular;
- (b) recklessly furnishes information which is false or misleading in a material particular; or
- (c) intentionally omits to disclose any matter or thing without which any application, report or information is misleading in a material particular,

commits an offence and shall be liable on conviction to a fine not less than Le 50,000,000,00 or to imprisonment, for a term not exceeding 5 years.

Restriction  
on use  
of titles.

120. (1) A person who is not a licensed broker or dealer within the meaning of this Act shall not use or by inference adopt the name or title of broker, dealer, share broker, share dealer, stock broker or stock dealer or exhibit at any place a name, title or description implying or tending to create the belief that he is a securities broker or dealer entitled to conduct brokerage or deal in business under this Act.

(2) A person who does not hold a licence under this Act shall not use or by inference adopt the name, title or description implying or tending to create the belief that he is the holder of the relevant licence and entitled to conduct the licensed activity.

(3) A body corporate that is not an approved stock exchange shall not without the consent in writing of the Commission use or by inference adopt the name or title of a stock exchange, securities exchange or exhibit at any place a name, title or description implying or tending to create the belief that the body corporate is a stock exchange.

(4) Any person who uses the words "capital market" or "capital markets" as part of its name or description or use any name, title or description implying or tending to create the belief that it is authorised by or linked to the Commission unless he has the written consent of the Commission.

commits an offence and shall be liable on conviction to a fine of not less than Le 25,000,000,00.

Unincorporated  
association.

121. (1) Proceedings for an offence alleged to have been committed under this Act by an unincorporated association shall be brought in the name of the association and not in the name of any of its members for the purposes of the proceedings and any rules of court relating to the service of documents shall have effect as if the association were a corporation.

(2) A fine imposed on an unincorporated association on its conviction for an offence under this Act shall be paid out of the funds or other assets of the association.

122. Where a body corporate is guilty of an offence under this Act, every director, executive officer, secretary or employee of the body corporate who was in any way by act or omission, directly, indirectly or intentionally concerned in or a party to the commission of the offence shall also be guilty of the offence.

Offences  
by body  
corporate.

123. Where a person commits an offence under this Act for which no penalty is stipulated, he shall be liable on conviction to a fine of not less than Le. 100,000,000.00.

General  
penalty.

#### PART XIV- MISCELLANEOUS PROVISIONS

124. There is hereby established a fund to be known as the Investor Protection Fund into which all administrative fines collected under this Act or Regulations made under this Act shall be paid into.

Investor  
Protection  
fund.

Immunity.

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

Regulations.

126. (1) The Minister may on the recommendation of the Commission by statutory instrument make regulations for giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), regulations may provide for -

- (a) the forms to be used for the purposes of this Act;
- (b) the publication of advertisement offering the services of sealers, investment advisers or offering securities for purchase or sale and the form and content of the adverts;

- (c) the furnishing of the Commission with information in addition to or in variation of, the information contained in a prescribed form lodged with it;
- (d) the times within which information required to be furnished to the Commission shall be furnished;
- (e) procedures under which and the conditions on which a public company may appeal to the Tribunal against a refusal of a stock exchange or the Commission to list its securities;
- (f) matters relating to stock exchanges and stock markets including making provision for the content and auditing of financial statements of an approved stock exchange and the requirements for the contents of an annual report to be provided to the Commission by an approved stock exchange;
- (g) prescribing the relevant educational qualifications and experience required for a person to be granted a licence under this Act;
- (h) the conduct of business by a licensee and their representatives;
- (i) the form and contents of financial statements to be maintained and submitted to the Commission by licensees and their representatives;
- (j) arrangements for the communication of information, confidential or not or the taking of evidence or the holding of an inquiry on

behalf of a regulator outside Sierra Leone which the Commission considers may assist the regulator in the performance of its functions;

- (k) take overs, mergers and acquisitions of securities in companies whether they are incorporated in Sierra Leone or not;
- (l) qualification of the staff of the Commission;
- (m) provisions requiring licensed persons to establish and maintain policies and procedures to guard against the use of capital markets for money laundering purposes;
- (n) provisions relating to corporate governance of public companies;
- (o) procedures relating to and governing the imposition of administrative fines;
- (p) any other matter as the Commission may determine.

(3) Fines and imprisonment under Regulations made under this Act shall not exceed Le. 150,000,000 or 15 years imprisonment..

Repeal and Savings.

127. (1) Sections 49A, 49B, 49C, 49D, 49E, 49F, 49G, 49H, 49I, 49J, 49K, 50A, 50B, 50C, 50D, 50E, 50F, 50G, 59H, 50I, 50J, 50K, 50L, 50M, 50N, 50P and 50Q of the Other Financial Services Act, 2001 is hereby repealed.

(2) Notwithstanding the repeal of Sections 49A, 49B, 49C, 49D, 49E, 49F, 49G, 49H, 49I, 49J, 49K, 50A, 50B, 50C, 50D, 50E, 50F, 50G, 59H, 50I, 50J, 50K, 50L, 50M, 50N, 50P and 50Q of the Other Financial Services Act, 2001 any -

Regulations.

128. The Commission may by statutory instruments make Regulations to give effect to this Act.

- (a) approval of a stock exchange made;
- (b) act or decision of a stock exchange approved;
- (c) act or decision of the Central Bank, including licence granted; or
- (d) directions or approval issued or other action taken by the Central Bank,

under any of the repealed sections shall so far as the directions, approval or actions are applicable under this Act continue to have effect as if made or issued by the Commission under this Act.

#### MEMORANDUM OF OBJECTS AND REASONS.

The purpose of this Act is to provide for the establishment of the Securities and Exchange Commission to regulate the operations, standards of practice and business conduct of persons in the securities sector and for other related matters.

The Act is divided into fifteen Parts.

PART I which is the interpretation part defines words used throughout the Bill.

PART II establishes the Securities and Exchange Commission and provides for its composition, tenure of its members, meetings of the Commission, disclosure of interest of its members in relevant matters, their immunity, committees of the commission, remuneration of its members and filling of vacancies.

PART III spells out the functions of the Commission, the statement of principle and how it can be waived or modified, the code of practice, guidelines to licensees and investors and power to publish information.

PART IV deals with administrative provisions. It provides for the appointment of Director-General and other staff of the commission, secondment of public officers, protection of officers, ministerial direction and the commission's power to engage the services of consultants and experts.

PART V spells out the financial provisions. It provides for funds of the commission, the accounts and audit, the financial year and the requirement of an annual financial report of the commission.

PART VI deals with licensing provisions setting out the requirements for licenses, method of application, renewal, opportunity for applicants to be heard, non-refundable prescribed fees, restriction on grant of licence, when licence can be refused or restricted, lodging of deposits, grant of representatives licences, cessation of activity on loss of representatives licence, commissions power to

enquire into securities transaction, revocation of licence, period of licence, notification of change of particulars, register of licence holders, inspection of register, operation pending renewal and appeals.

PART VII deals with registers of interest in securities, notice of particulars, defence to prosecution, production of register particulars of financial journalists, extracts of register and interest in securities.

PART VIII provides for the conduct of securities business. It puts emphasis on record keeping, orders and contract notes, disclosure of certain interests, actions by adviser, dealings as principal or by employees of holders of licence, priority to client's orders, client's money and securities through sale.

PART IX deals with the accounts and audit of a dealer's, broker's or a fund manager's licence, the security documents, the trust account and moneys withdrawn from it, audit and the removal and resignation of auditor, the fees and expenses of the auditor, the accounts, report of auditor to the commission where auditor breaches in the performance of his functions or report by stock exchange for a breach by the fund manager, dealer or broker who is a member of a stock exchange, defamation, obligations by stock exchange, restraint, disclosure, orders and directions and orders on payment of moneys.

PART X provides for a stock exchange and the criteria for the establishment of stock market and stock settlement facilities, the approval of stock exchange, the interim stock exchange, criteria for amending listing rules of stock exchange, assistance to commission by persons providing clearing and settlement services, levels of disciplinary powers of stock exchange and the commission, enforcement of rules, directions to stock exchange, prohibition of trade, closure of trading and record keeping.

PART XI deals with market abuses particularly false trading, manipulation, misleading statements, fraudulently inducing persons, dissemination of information, manipulative and deceptive devices, insider dealings and other offences under Part XI.

PART XII makes disciplinary provisions that may be published, the procedure for hearing of complaints, conducting disciplinary inquiries, establishment of securities tribunal, its functions and powers and appeals by aggrieved persons.

PART XIII provides for investigations. It involves production of books, investigation, power to search premises, incriminating statements, offences under this part, copies of extracts, privileged communication, disclosure, power of entry, power to make certain orders, assistance to foreign authority, secrecy of information and duty to report fraud, dishonesty or one of the market abuse offences.

PART XIV deals with offences of the nature of falsification of records, false or misleading statements, restriction on use of titles, unincorporated associations, offences by body corporate and general penalty.

PART XV is the miscellaneous provisions.

MADE this            day of            , 2017

MOMODUL KARGBO,

*Minister of Finance and Economic Development.*

FREETOWN  
SIERRA LEONE.