



GUYANA

ACT No. 21 OF 1998

SECURITIES INDUSTRY ACT 1998

I assent

JANET JAGAN,
President
31st December, 1998

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

A.D. 1998,

Enacted by the Parliament of Guyana: -

PART I PRELIMINARY

Short title.

1. This Act may be cited as the Securities Industry Act 1998.

Commencement.

2. This Act shall come into operation on such day or days as the Minister may by order appoint, and different days may be appointed for different provisions of this Act.

Interpretation.

3. In this Act -

(1) (a) In this Act -

- (i) an "affiliate" of, or person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified person, whether through the ownership of voting securities, by contract or arrangement, or otherwise;
- (ii) an issuer is "affiliated" with another issuer, and they are "affiliates" of each other, if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (iii) if two issuers are affiliated with the same body corporate at the same time, they are affiliated with each other;

- (b) "associate," where used to indicate a relationship with any person, means -

- (i) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling him to more than ten per cent of the voting rights attached to outstanding securities of the issuer -
 - (A) under all circumstances; or
 - (B) by reason of the occurrence of an event that has occurred and is continuing;
 - (ii) a partner of the person acting on behalf of the partnership of which they are partners;
 - (iii) a trust or estate in which the person has a beneficial interest of more than ten percent of the entire beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
 - (iv) a spouse or child of the person; and
 - (v) any other relative of the person or his spouse if that relative has the same residence as the person;
- (c) "association of securities companies and intermediaries" means an organization of securities companies and securities intermediaries that -
- (i) supervises its members to ensure compliance with this Act;
 - (ii) regulates the conduct of its members or of any other person in the securities market; or
 - (iii) regulates the entry of any person into, or the prices for services in, the securities market;
- (d) "Bank of Guyana" means the Bank of Guyana established under the Bank of Guyana Act 1995;
- (e) "beneficial ownership" includes ownership through a trustee, legal representative, agent, nominee or other intermediary;
- (f) "broker" means a person engaged in the business of effecting transactions in securities for the account of others;
- (g) "call" means an option to demand delivery of a specified number or amount of securities at a fixed price within a specified time, but does not include an option or right to acquire the issuer's securities from the issuer, or from an affiliate of the issuer, that granted the option or the right to acquire;
- (h) "clearing agency" means a person that -
- (i) maintains records of trades of securities for the purpose of settling claims for money and securities;

No. 11 of 1995.

- (ii) maintains records of transfers and pledges of securities for the purpose of permitting securities to be transferred by record entry;
 - (iii) holds security certificates deposited with it for the purpose of permitting securities to be transferred by record entry;
 - (iv) performs any combination of two or more functions referred to in paragraphs (i) to (iii), but does not include a securities company or financial institution acting exclusively in the ordinary course of its customary business unless the Council prescribes otherwise;
- (i) "collective investment scheme" means any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements, whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of property or sums paid out of such income;
- (j) "control" in relation to an issuer means the power of a person, or persons acting in concert by virtue of an agreement, arrangement, commitment or understanding, to secure by means of -
- (i) the holding of shares or the possession of voting power in or in relation to that issuer; or
 - (ii) any other power conferred by the articles of incorporation or other document regulating the issuer,
- that the business affairs of the issuer are conducted in accordance with the wishes of such person or persons;
- (k) "Council" means the Guyana Securities Council established under section 4;
- (l) "Court" means the High Court;
- (m) "dealer" means a person engaged in the business of buying and selling securities for his own account who holds himself out, at all normal times, as willing to buy and sell securities at prices specified by him;
- (n) "distribution," where used in relation to trading in securities, means-
- (i) a sale of a security by or on behalf of the issuer of the security that has not been previously issued;
 - (ii) a sale of a previously issued security purchased from the issuer or an underwriter of the security,

- other than a security of a reporting issuer that was purchased by a seller less than one hundred and eighty days before the sale, or such other period as the Council may prescribe;
- (iii) a sale of a previously issued security from the holdings of a person or prescribed group of persons if the aggregate holding of the securities of that class by that person or group
 - (A) enables the person or group to exercise control over the management and policies of the issuer in any manner; or
 - (B) exceeds twenty per cent of the outstanding voting securities of the issuer;
 - (iv) a sale of previously issued securities from the holdings of a sophisticated purchaser as defined in section 59(2)(d) or of a prescribed group of persons if the aggregate number or amount of securities exceeds the number or amount prescribed by the Council,
- and includes a trade involving a purchase and sale, or repurchase and resale, of a security in the course of, or incidental to, a sale of securities mentioned in paragraphs (i) to (iv);
- (o) "equity security" means any stock or similar security and includes a right, other than a call, to acquire such a security;
 - (p) "expert" means a lawyer, engineer, accountant, valuator or any other person whose profession or reputation gives authority to a statement made by him;
 - (q) "file" means file with the Council;
 - (r) "filing" means the submission of a document or instrument to the Council pursuant to a requirement of this Act, other than the submission of a document or instrument pursuant to an investigation;
 - (s) "financial institution" means a company licensed under the Financial Institutions Act 1995;
 - (t) "free capital" means capital which is unencumbered and which is separately held in such form, and only for such purposes, as the Council may prescribe;
 - (u) "insider" means -
 - (i) an issuer in respect of its securities;
 - (ii) an affiliate of an issuer;
 - (iii) a director or officer of an issuer;

- (iv) an employee of an issuer having such responsibilities and duties as the Council may prescribe;
 - (v) a person who beneficially owns more than ten per cent of the equity securities of an issuer or who exercises control or direction over more than ten per cent of the votes attached to the securities of an issuer;
 - (vi) and other person whose relationship to the issuer gives him access to a material confidential fact; and
 - (vii) a person who is informed of a material confidential fact by a person described in paragraphs (i) to (vi) and who knows or reasonably ought to know that the informant is an insider;
- (v) "investment adviser" means a person engaging in, or holding himself out as engaging in, the business of advising another with respect to investment in, or the purchase or sale of, securities;
- (w) "issuer" means a person that has securities outstanding or issues, or proposes to issue, a security;
- (x) "market participant" means a person required to be registered under section 47;
- (y) "material change," where used in relation to the affairs of an issuer, means a change in the business operations, assets or ownership of the issuer that could reasonably be expected to have a significant effect on the market price or value of the securities of the issuer and includes, without limitation, a decision to implement such a change made by the directors of the issuer;
- (z) "Minister" means the Minister responsible for Finance;
- (2) (a) "misrepresentation" includes-
- (i) an untrue statement of a material fact; or
 - (ii) an omission to state a material fact that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made;
- (b) "offer to the public" in relation to any security, means any offer to the public at large or to any section of the public, whether selected as clients of persons issuing the prospectus or in any other manner by way of advertisement or other form of solicitation, but does not include an offer by an offeror who is not a reporting issuer under this Act where the offer is made to fewer

than fifty persons and the offer can be regarded as not being calculated to result directly or indirectly in the securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or as being other than a matter of domestic concern of the persons making and receiving it;

- (c) "order" means, unless a contrary intention appears, an order of the Council or a self-regulatory organization;
- (d) "participant" means a person who receives services from a clearing agency other than exclusively -
 - (i) through another person who is a participant; or
 - (ii) as a -
 - (A) pledgee;
 - (B) judgment creditor; or
 - (C) beneficial owner;for whom a blocked account has been established.
- (e) "prescribe" means prescribe by regulations of the Council;
- (f) "public company" means a company-
 - (i) any of whose issued shares or debentures are or were part of a distribution, or an offer, to the public; or
 - (ii) that is the issuer of a security that is beneficially owned by more than fifty persons;
- (g) "purchase" includes-
 - (i) any purchase or acquisition of a security for consideration, whether the terms of payment are on margin, installment or otherwise;
 - (ii) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing,but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;
- (h) "records" means-
 - (i) accounts, correspondence, memoranda and any other data or information relating to the property or affairs of a person; or
 - (ii) data or information prepared or maintained in a bound or loose leaf form or in a photographic film form or entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intell-

igible written or other visual form within a reasonable time;

- (i) "registrant" means a registered securities company or registered securities intermediary;
- (j) "regulation" means a regulation made by the Council under section 126;
- (k) "relative," in relation to a person, means-
 - (i) a spouse or child;
 - (ii) a parent, grandparent, brother, sister or the spouse of each such person;
 - (iii) a son-in-law or a daughter-in-law; or
 - (iv) a step-child;
- (l) "reporting issuer" means an issuer that has filed a registration statement under section 56 and has not been the subject of an order of the Council altering its status as a reporting issuer;
- (m) "right to acquire a security" means
 - (i) a security currently convertible into another security;
 - (ii) a security carrying a warrant or right to acquire another security; or
 - (iii) a currently exercisable option, warrant or right to acquire another security or security specified in paragraph (i) or (ii);
- (n) "sale" includes -
 - (i) any sale or disposition of a security for consideration, whether the terms of payment are on margin, installment, or otherwise;
 - (ii) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing,but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt;
- (o) "Secretary" means the Secretary appointed under section 24;
- (p) "securities company" means a company which carries on a business of trading in securities on behalf of others and, without limiting the generality of the foregoing, includes a company which carries on business as-
 - (i) a broker;
 - (ii) a dealer;
 - (iii) an underwriter;

- (iv) an investment adviser; or
- (v) any combination of two or more of the foregoing;
- (q) "securities exchange" means a person who maintains or provides -
 - (i) physical facilities where persons may meet to execute trades in securities; or
 - (ii) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale;
- (r) "securities intermediary" means a natural person who, as an individual or in partnership, carries on the business of acting as
 - (i) a broker;
 - (ii) a dealer;
 - (iii) a trader;
 - (iv) an underwriter;
 - (v) an investment adviser; or
 - (vi) any combination of two or more of the foregoing.
- (s) "securities register" means a record or records maintained by or on behalf of an issuer in which the securities issued by it are recorded showing with respect to each class or series of securities;
 - (i) the name and address of each security holder of the issuer;
 - (ii) the number of securities held by each security holder; and
 - (iii) the date and particulars of the issue and transfer of each security;
- (t) "security" means any document or record evidencing ownership or any interest in the capital or debt, property, profits, earning or royalties of any enterprise or proposed enterprise and, without limiting the generality of the foregoing, includes any -
 - (i) bond, debenture, note or other evidence of indebtedness;
 - (ii) share, stock, unit, unit certificate, participation certificate or certificate of share or interest;
 - (iii) instrument commonly known as a security;
 - (iv) instrument or document constituting evidence of or any interest or participation in -
 - (A) a profit sharing agreement;
 - (B) a trust; or
 - (C) an oil, natural gas or mining lease, claim or royalty or other mineral right;
 - (v) units in collective investment schemes, including shares in or securities of an open-ended investment company; or

- (vi) the right to acquire or dispose of anything specified in paragraphs (i) to (v),
but does not include -
 - (vii) currency;
 - (viii) a cheque, bill of exchange or bank letter of credit;
 - (ix) a certificate or document constituting evidence of any interest in a deposit account with -
 - (A) a financial institution;
 - (B) a credit union; or
 - (C) an insurance company within the meaning of the Insurance Act; or
 - (x) a contract of insurance issued by an issuer;
- (u) "self-regulatory organization" means an association of securities companies and intermediaries, a clearing agency or a securities exchange;
- (v) "senior officer" means -
 - (i) the chairman or vice-chairman of the board of directors, the managing director, the deputy managing director, the president, the vice-president, the secretary, the treasurer, the financial controller, the general manager or the deputy general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office; and
 - (ii) each of the five highest paid employees of an issuer, including any individual referred to in paragraph (i);
- (w) "sophisticated purchaser" means a sophisticated purchaser as defined in section 59(2)(d);
- (x) "subsidiary" means an issuer that is owned or controlled by another issuer;
- (y) "take-over bid" means a take-over bid as defined in section 113 (4);
- (z) "trade" or "trading" includes-
 - (i) any sale or purchase of a security;
 - (ii) any participation as a dealer, trader, broker, underwriter or agent in any transaction in a security;
 - (iii) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any activity referred to in paragraphs (i) to (ii);

- (3) (a) "trader" means a natural person who carries on the business of trading or who is employed by another person for the purpose of carrying on such business;
- (b) "underwriter" means a person who -
- (i) as principal, agrees to purchase a security for the purpose of a distribution;
 - (ii) as agent, offers for sale or sells a security in connection with a distribution; or
 - (iii) participates directly or indirectly in a distribution described in paragraph (i) or (ii) for consideration, but does not include -
 - (iv) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer; or
 - (v) a company that purchases shares of its own issue and resells them.
- (c) "voting security" means a security carrying voting rights -
- (i) under all circumstances; or
 - (ii) by reason of the occurrence of an event that has occurred and is continuing;
- and includes a right, other than a call, to acquire such security.

PART 11 THE SECURITIES COUNCIL

Division 1 - Establishment, Functions and Powers

4. There is hereby established a body corporate to be known as the Guyana Securities Council. Establishment of the Council.
5. The functions of the Council are to - Functions of the Council.
- (a) advise the Minister on all matters relating to securities;
 - (b) maintain surveillance over the securities markets and ensure orderly, fair and equitable dealings in securities;
 - (c) register, authorize or regulate, in accordance with this Act, self-regulatory organizations, securities companies, securities intermediaries, brokers, dealers, traders, underwriters, issuers and investment advisers, and control and supervise their activities with a view to maintaining proper standards of conduct and professionalism in the securities business;
 - (d) protect the integrity of the securities markets against abuses rising from the practice of insider trading;
 - (e) create and promote such conditions in the securities markets as may seem to it necessary, advisable or

appropriate to ensure the orderly growth and development of the capital market.

Powers of
the Council.

6. For the purpose of the discharge of its functions the Council has power, subject to this Act, to -
 - (a) deal with such matters as may be referred to it by any person registered with the Council under this Act, from time to time;
 - (b) formulate principles for the guidance of the securities industry;
 - (c) monitor the solvency of registrants and take measures to protect the interest of customers where the solvency of any such registrant is in doubt;
 - (d) adopt measures to supervise and minimize any conflict of interests that may arise in the case of brokers or dealers;
 - (e) review, approve and regulate take-overs, amalgamations and all forms of business combinations in accordance with this Act or with other written law in all cases in which it considers it expedient or appropriate to do so;
 - (f) review the contents of prospectuses, offering circulars or any form of solicitation, advertisement or announcement by which securities are offered for sale to the public;
 - (g) take action against persons registered or required to be registered under this Act for failing to comply therewith;
 - (h) undertake such other activities, including the making of regulations, as are necessary or expedient for giving full effect to this Act;
 - (i) do all things which may be necessary or expedient or are incidental or conducive to the discharge of any of its functions and powers under this Act.
- (2) Where the Council takes any disciplinary action against a financial institution or an employee of any such institution, the Council shall forthwith inform the Bank of Guyana of the disciplinary action so taken.

Delegation
of powers.

7. (1) The Council may, by order, delegate any power or function conferred on it by this Act, except the powers to make regulations and to hear appeals, to any self regulatory organization registered with the Council under this Act or to any senior officer of the Council.
- (2) A delegation pursuant to subsection (1) shall be revocable and shall not preclude the exercise by the Council of any power, duty, function or responsibility so delegated.

- (3) All decisions made, and minutes of all meetings held, by a delegatee under subsection (1) shall be recorded in writing.
 - (4) A delegatee shall forthwith notify the Council of every decision made by him.
 - (5) The Council may, on its own motion, review a decision made by a delegatee and where it intends to do so, the Council shall, within thirty days of the decision, notify the delegatee and the person directly affected by the decision of the date, time and venue of the hearing to review the decision.
 - (6) A person aggrieved by a decision of a delegatee may, within fourteen days of the decision, apply to the Council for a review of that decision.
 - (7) Within seven days of the receipt of an application under subsection (6), the Council shall notify the applicant and the delegatee of the date, time and venue of the hearing to review the decision.
 - (8) Pending the review of a decision, the Council may, on the application *ex parte* of the applicant, grant a stay of the decision under review and shall notify forthwith the delegatee of any stay so granted.
 - (9) Upon reviewing the decision, the Council may vary or confirm the decision under review or make such other decision as it considers proper.
8. (1) The seal of the Council shall be kept in the custody of the Chairman or the Secretary, as the Council may determine, and may be affixed to instruments in the presence of the Chairman or the Secretary.
- (2) The seal of the Council shall be attested by the signatures (which may be facsimile signatures) of the Chairman and the Secretary.
- (3) All documents, other than those required by law to be under seal, made by and all orders and decisions of the Council may be signified under the hand of the Chairman or the Secretary.
- (4) Service upon the Council of any notice, order or other document shall be effected by delivering the same, or by sending it by registered post addressed to the Secretary at the office of the Council.
- (5) Subject to section 9(4), the functions of the Chairman under this section may, in the event of his absence or inability, be

Custody and
use of seal.

performed by any Member of the Council authorized by the Council to act in that behalf.

Division 2 - Membership

Membership
of the Council.

9. (1) The Council shall consist of not more than five nor less than three individuals (hereafter referred to as "Members"), who shall be appointed by the Minister.
- (2) The Members shall be selected from among persons who appear to the Minister to have wide experience and ability in legal, financial, business or administrative matters, one of whom shall be an attorney-at-law of at least ten years standing, and one of whom shall be an officer of the Bank of Guyana.
- (3) Upon the commencement of this Part, the Minister shall appoint all of the Members, and shall also appoint one of their number, other than the Member from the Bank of Guyana, to be its Chairman.
- (4) Where a Member is by reason of illness, absence from the country or otherwise, unable to perform his functions as a Member, or where an office of Member is vacant, the Minister may appoint a temporary Member to act in place of that Member during his illness, absence or incapability, or until the office is filled, as the case may be.
- (5) A temporary Member shall have qualifications similar to those of the Member for whom he is appointed to act.

Disqualification
for appointment.

10. (1) A person shall not be appointed or continue as Member if directly or indirectly, as owner, security holder, director, officer, partner, employee or otherwise, he -
 - (a) is engaged in the securities business; or
 - (b) has a material pecuniary or proprietary interest in -
 - (i) a securities company; or
 - (ii) a self-regulatory organization.
- (2) If an interest mentioned in subsection (1)(b) vests in a Member by gift or will or succession for his own benefit, he shall forthwith disclose the interest to the Chairman and shall within three months thereafter absolutely dispose of the interest.
- (3) A person who is appointed a Member or General Manager under this Act shall, forthwith after the appointment, declare every interest he has in any security and thereafter he shall not, while holding office as a Member or General Manager, as the case may be -

- (a) in the case of the General Manager, engage in any other business, vocation or employment other than that of serving as General Manager; or
 - (b) participate, directly or indirectly, in any stock market operation or transaction in which he has a material interest and which is subject to regulation by the Council pursuant to this Act.
- (4) A person who contravenes subsection (3) is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for six months.
- 11. (1) Subject to this section, the Chairman and the other Members shall hold office for three years but shall be eligible for reappointment.
- (2) The Chairman of the Council may resign as a Member by notice in writing addressed to the Minister.
- (3) A Member other than the Chairman, may at any time resign as a Member by notice in writing addressed to the Minister and transmitted through the Chairman.
- (4) A Member may be removed from membership of the Council by the Minister where he-
 - (a) becomes a person of unsound mind;
 - (b) is absent from three consecutive meetings of the Council without the permission of the Chairman or the Minister or reasonable cause;
 - (c) is guilty of misconduct in relation to his duties as a Member;
 - (d) is sentenced to imprisonment or is convicted of an offence involving fraud or dishonesty;
 - (e) is declared bankrupt in accordance with the law of Guyana or any other country;
 - (f) in the case of a person possessed of professional qualifications, is disqualified or suspended, otherwise than at his own request, from practicing his profession in Guyana or in any other country by an order of any competent authority made in respect of him personally;
 - (g) is unable to perform his functions because of illness or for any other reason;
 - (h) contravenes this Act or any regulation.
- 12. A Member shall be paid such remuneration and allowances in respect of his office as the Minister may determine from time to time.
- 13. No action or other proceeding for damages shall be instituted against a Member or an employee or agent of the Council for an act

Term of office.

Remuneration
of Members.Protection of
Members,
employees
or agents.

done in good faith in the performance of a duty or in the exercise of a power under this Act.

Confidentiality.

14. (1) No Member and no person employed or retained by the Council shall make use of any confidential information obtained as a result of his relationship with the Council for his own benefit or advantage.
- (2) No person specified in subsection (1) shall disclose confidential information obtained as a result of his relationship with the Council to any person other than -
 - (a) an official or employee of the Government of Guyana; or
 - (b) the duly authorized representative of the government of another country, in connection with the enforcement of this Act or similar legislation.
- (3) A person who receives confidential information from a person specified in subsection (1) is subject to the provisions of this section as if he were a person specified in subsection (1).
- (4) A person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for one year.

Division 3 - Proceedings of the Council

Meetings.

15. (1) The Council shall ordinarily meet for dispatch of business at such times and places as the Chairman may decide but shall meet at least once in every two months.
- (2) The Chairman shall at the request in writing of not less than two Members, one of whom may be the Chairman, call an extraordinary meeting of the Council within seven days of the receipt of such request.
- (3) Subject to subsection (4), the Chairman shall preside at every meeting of the Council and in his absence any Member designated by the Chairman shall preside at the meeting.
- (4) Where no Member is so designated, the other Members of the Council present shall elect one of their number to preside at the meeting.
- (5) The quorum at every meeting of the Council shall be there.
- (6) All questions proposed at a meeting of the Council shall be determined by a simple majority of the Members present and voting and where the votes are equal the Chairman or the Member presiding shall have a second or casting vote.



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

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

Committees.

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

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

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

Minutes.

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

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

- (4) The Minister is entitled, upon request, to have access to the minutes of the Council or a committee hereof, and to receive from the Council a copy of any of those minutes.
- Declaration of interest.** 18. (1) A Member who is in any way, whether directly or indirectly, interested in a matter before the Council shall declare his interest to the Council.
- (2) The Council, excluding the Member whose interest is being considered, shall determine whether this interest is sufficiently material as to constitute a conflict of interest.
- (3) In the event that the Council finds that the interest is such as to constitute a conflict of interest the Member shall not take part in any deliberations on that matter, and shall leave the room during such deliberations.
- (4) For the purposes of this section, a Member shall be deemed to have an interest in a matter if he, or his spouse, or his nominee, is a shareholder or partner in, or an officer of, a company or other body of persons having an interest or being involved in a matter before the Council.
- (5) Any person who fails to comply with subsection (1) is liable on summary conviction to a fine of fifty thousand dollars, unless he proves that he did not know that he had an interest in the matter which was the subject of consideration at the meeting.
- Consultation with Bank of Guyana and other agencies.** 19. (1) The Council shall consult and co-operate with the Bank of Guyana or any other agency that exercises regulatory authority under a written law over a financial institution, insurance company or other body in order to minimize duplication of effort and to maximize the protection of investors.
- (2) The Council may co-operate with an agency of a foreign government in connection with the investigation of a contravention of this Act or any similar written law whether the activities in question occurred in or outside of Guyana.
- (3) The Council may co-operate in the work of national, regional or international organizations dealing with the regulation of securities markets.
- Annual Report.** 20. (1) The Council shall within four months of the end of each financial year send an annual report to the Minister who shall cause it to be laid in the National Assembly within thirty days after he receives it.

- (2) Copies of an annual report shall be available to the public on or before the expiration of fourteen days after it is required to be laid in the National Assembly under subsection (1).
21. The Council may, subject to the approval of the Minister, make rules -
- (a) respecting the calling of and conduct of business at meetings of the Council;
 - (b) respecting procedures for the initiation and holding of hearings by the Council;
 - (c) prescribing the procedure for appeals and review of orders of its delegates and self-regulatory organizations;
 - (d) with the approval of the Minister, establishing a code of conduct governing the activities of Members and the officers and employees of the Council in order to avoid conflicts of interest and other practices that the Council considers undesirable;
 - (e) respecting any other matter, whether or not required by this Act, relating to the organization, procedure, administration or practice of the Council.

Regulation
of business.

Division 4 - Staff

22. (1) The Council shall appoint a General Manager who shall hold office on such terms and conditions as the Minister shall approve.
- (2) The Council may, with the approval of the Minister, appoint the Chairman or the General Manager as its Chief Executive Officer.
23. (1) The Council may appoint, on such terms and conditions as the Minister shall approve, an expert to assist it in any manner that it considers necessary.
- (2) Where the Council appoints an expert to advise it on the development of specific policies, regulations or other regulatory proposals of the Council or a self regulatory organization, the expert shall formulate and report his views to the Council in writing and the Council may, if it thinks fit, make that report available to the public.
24. The Council may appoint, at such remuneration and on such terms and conditions as the Minister shall approve, a Secretary and such other officers and employees as it considers necessary or appropriate for the efficient performance of its functions.
25. (1) Section 28 of the Public Corporations Act 1988 shall *mutatis mutandis* apply to public officers, persons (not being public

Appointment of
General Manager
and Chief
Executive Officer.

Appointment
of experts.

Appointment of
other staff.

Superannuation
benefits.

officers) holding appointments in the public service, and teachers, referred to therein, who are seconded, temporarily transferred or transferred to the Council, as if the Council were a public corporation.

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

Division 5 - Financial Provisions

Funds and
resources of
the Council.

26. The funds and resources of the Council shall consist of -
- (a) such sums as may be appropriated by Parliament;
 - (b) all fees and other sums from time to time falling due to the Council in respect of its operations;
 - (c) all other sums or property that may in any manner become payable in any matter incidental to its functions and powers.

Financial powers.

27. For the purpose of carrying out its functions, the Council may, with the prior approval, in writing, of the Minister -
- (a) charge fees for any service provided; or
 - (b) charge registration fees; or
 - (c) charge fees for transactions effected on a self-regulatory organization.

Application
of funds.

28. The funds of the Council shall be applied in defraying the following expenditures -
- (a) the remuneration, fees and allowances of the Members of the Council;
 - (b) the salaries, fees, allowances, advances, loans, gratuities, pensions and other payments to the General Manager, Chief Executive Officer, Secretary and other staff of the Council;
 - (c) the capital and operating expenses, including maintenance and insurance of any property of the Council;
 - (d) any other expenditure authorized by the Council in the discharge of its functions and contractual obligations.

Cash deposits
and payments.

29. (1) All monies of the Council accruing from its operations under the Act shall be paid into a bank appointed by the Council, and such money shall as far as practicable be paid into the bank from day to day.
- (2) All payments made out of the funds of the Council shall be made by the person or persons authorized so to do by rules made under section 21.

Accounts
and Audit.

30. (1) The Council shall keep proper books of accounts of -
- (a) all monies received and expended by the Council and shall record the matters in respect of which such monies have been received and expended; and
 - (b) the assets and liabilities of the Council.
- (2) Where assets are held upon any special trust, the receipts and expenditures relating to such trust shall be kept in an account separate and apart from all other receipts and expenditures.
- (3) All accounts shall be kept in the principal office of the Council for a period of six years after the last entry therein, and shall be open to inspection by the Members, the Minister and by the auditor appointed by the Council.
- (4) Within four months after the end of each financial year, the Council shall cause to be prepared in respect of that year, financial statements which include -
- (a) an account of the revenue and expenditures of the Council;
 - (b) a balance sheet;
 - (c) a report setting out the activities of the Council; and
 - (d) such other accounts as the Council may require.
- (5) Accounts prepared in accordance with this section shall -
- (a) be audited by an auditor who is a member of, and in good standing with, the Institute of Chartered Accountants of Guyana and who is appointed by the Council with the approval of the Minister; and
 - (b) be signed by the Chairman and not less than two other Members.
- (6) The Secretary shall cause copies of the signed accounts to be sent to every Member of the Council, the auditor and the Minister and the Minister shall cause copies thereof to be laid before Parliament.
- (7) The Minister may at any time request the Council to provide him with information concerning any aspect of its administration of this Act, and the Council shall provide the information requested within fourteen days.
- (8) The Auditor General may carry out periodic inspections to ensure that sums appropriated by Parliament are utilized as provided for.

PART III
SELF-REGULATORY ORGANIZATIONS

Registration of
self-regulatory
organization.

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

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

Characteristics of
self-regulatory
organization.

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

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

Processing
of applications.

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

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

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

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

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

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

- (6) Where the Council, subject to the approval of the Minister, grants an application for registration, it may require a change in the rules of the applicant to ensure its fair administration or

to make the rules conform to the requirements of, or otherwise further the purposes of, this Act.

- (7) In considering whether, subject to the approval of the Minister, to grant an application for registration, the Council shall, in particular, take into account the rules of the applicant that relate to -
 - (a) prices, fees or rates charged by members of the applicant for services;
 - (b) conditions of entry into the securities market through membership in the applicant or otherwise;
 - (c) the structure or form of a member or participant;
 - (d) the quantity or quality of services furnished by a member or participant; and
 - (e) any type of restraint on competition.
 - (8) The Council may, subject to any conditions it may impose, accept a voluntary surrender of a registration.
34. (1) The rules of an applicant for registration shall contain provisions - Obligatory rules.
- (a) for the protection of investors and the public interest;
 - (b) for fostering cooperation and coordination among persons who clear, settle, regulate, process information about and facilitate trades in securities;
 - (c) ensuring fair representation of its members in the administration of its affairs;
 - (d) for an equitable allocation of reasonable fees and charges among persons who use its facilities;
 - (e) relating to the disciplining of a member or employee of a member who contravenes its rules or this Act and without prejudice to the generality of the foregoing, may provide for censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of or exclusion from employment; and
 - (f) specifying the procedure required by section 38 for disciplinary proceedings, denial of membership, exclusion from employment or denial or limitation of access to services furnished by it or its members.
- (2) Without prejudice to subsection (1), the rules of an applicant for registration as securities exchange or association of securities companies and intermediaries shall contain provisions designed -
- (a) to prevent deceptive and manipulative acts and practices and to promote fair trading practices and to facilitate an efficient market; and
 - (b) to provide, subject to sections 33(3) and 38, that a securities company or securities intermediary may become a member of the exchange or association.

- (3) The rules of an applicant for registration as a clearing agency shall contain provisions designed -
 - (a) to develop and operate a prompt and accurate clearance and settlement system;
 - (b) to safeguard money and securities in its custody or under its control or for which it is responsible; and
 - (c) to provide, subject to sections 33(3) and 38, that a securities company or securities intermediary, a financial institution, another clearing agency or a person or class of persons designated by the Council may become a participant in the clearing agency.
- (4) The rules of an applicant for registration shall not -
 - (a) permit unfair discrimination among persons who use its facilities; or
 - (b) restrain competition to an extent not necessary to achieve the objectives specified in subsections (1) to (3).

Procedure on
proposed amend-
ment to rules.

- 35. (1) Where a self-regulatory organization proposes to amend its rules, it shall file with the Council a copy of the proposed amendment and a concise statement of its substance and purpose.
- (2) Forthwith after receipt of a proposed amendment under subsection (1), the Council shall, subject to subsection (6), publish in the Gazette and in a daily newspaper circulating in Guyana, on three consecutive Saturdays, a notice inviting any interested person to submit written comments on the amendment, and the cost of the publication shall be borne by the self-regulatory organization.
- (3) Written comments of interested persons shall be submitted to the Council within fourteen days of the third publication of the notice referred to in subsection (2).
- (4) Subject to subsection (5), the Council may make an order approving a proposed amendment to the rules of a self-regulatory organization.
- (5) The Council may make an order refusing a proposed amendment to the rules of a self-regulatory organization if -
 - (a) the organization is not organized in a manner and would not have the capacity and resources to enforce compliance with its rules as amended;
 - (b) the amended rules would not comply with section 34; or
 - (c) the amended rules would be inconsistent with this Act.
- (6) Where the Council determines that a proposed amendment filed pursuant to subsection (1) -

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

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

Power of Council to require change in rules.

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

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

Control of commissions and fees.

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

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

Conditions for membership.

- (2) A self-regulatory organization may refuse membership, or impose conditions on membership, or prohibit or limit access to services furnished by it or by its members, to a person who
 - (a) lacks the financial responsibility or operational capability required by its rules;
 - (b) does not meet the criteria for membership specified in its rules; or
 - (c) does not carry on the type of business that its rules require a member to carry on,
 but it shall not refuse membership or impose conditions on membership to a person who carries on the type of business required by its rules on the basis of the volume of the required business or any other lawful business that the person carries on.

- (3) A self-regulatory organization may refuse membership to, impose conditions of membership on, prohibit or limit access to services furnished by it or its members to, or impose conditions on employment by a member of, a person who
 - (a) lacks the training, experience or competence required by its rules; or

- (b) contravenes this Act or any other law or a rule of a self-regulatory organization registered under this Act or any other law.
 - (4) A self-regulatory organization shall, before refusing membership or imposing conditions on such membership or imposing conditions on employment by a member and before disciplining a member or an employee of a member, comply with the procedures specified for orders under section 129(1), (4) to (7) and (8)(a) and (b).
 - (5) A self-regulatory organization may, but need not, publish a decision disciplining a member or an employee of a member unless the Council directs otherwise.
 - (6) Subject to subsection (7), a self-regulatory organization may, without holding a hearing as required by subsection (4)-
 - (a) suspend-
 - (i) a member who has been expelled or is under suspension from;
 - (ii) an employee of a member who has been excluded or is under suspension from employment by the member by,

another self-regulatory organization that is registered under this Act or another similar statute;
 - (b) suspend a member if the organization reasonably believes it necessary for the protection of investors, creditors, members or the organization because of financial or operational difficulties of the member;
 - (c) suspend a participant who is in default of delivery of money or securities to a registered clearing agency; and
 - (d) prohibit or limit access to services furnished by it or its members to a person -
 - (i) to whom paragraph (a), (b) or (c) applies;
 - (ii) who does not meet the criteria for access specified in its rules; or
 - (iii) where such action is necessary for the protection of investors, creditors, members or the organization.
 - (7) Where a self-regulatory organization acts in accordance with subsection (6), the organization shall provide an opportunity for such a hearing within seven days of its decision and the suspension, prohibition or limitation shall remain in effect until the hearing is completed.
39. (1) Where a self-regulatory organization makes a decision under section 38 refusing membership or imposing conditions on membership or imposing conditions on the employment by a member, it shall at once file with the Council a copy of the

Filing of copy
of decision
with Council.

decision, the reasons therefor and any other information prescribed by the Council.

- (2) On an appeal or review of a decision made pursuant to section 38(2) or (3), the Council shall affirm the decision if it finds that -
 - (a) the decision is in accordance with the rules of the organization and this Act; and
 - (b) the rules or this Act were applied in a manner that furthers the objectives specified in section 34, but if it does not so find or finds that the decision restrains competition to an extent not necessary to achieve the objectives specified in section 34(1) to (3), it may set aside the decision or require the organization to-
 - (c) admit the person affected to membership;
 - (d) permit the person to be employed in the desired capacity by a member;
 - (e) grant the person access to services furnished by it or its members; or
 - (f) take any other action not inconsistent with the objectives specified in section 34.
 - (3) On an appeal or review of a decision of a self-regulatory organization disciplining a member or an employee of a member, the Council may -
 - (a) affirm or modify the sanction imposed if it finds that the person disciplined contravened the rules of the organization or this Act; or
 - (b) set aside the sanction imposed if it does not so find; and
 - (c) remand the matter to the organization for further proceedings.
 - (4) On an appeal or review referred to in subsection (3), the Council may set aside or modify the sanction imposed if it finds that it restrains competition to an extent not necessary to achieve the objectives specified in section 34(1) to (3).
 - (5) An order made by the Council under subsection (3) or (4) setting aside or modifying a sanction does not affect the validity of any action taken by the organization as a result of the sanction before the order was made, unless the action contravened this Act or the rules of the organization.
40. (1) No self-regulatory organization shall delist a security admitted for quotation by it, unless it obtains an order from the Council authorizing the delisting and imposing, for the protection of investors, such conditions, if any, as it thinks fit.
- (2) The Council shall not refuse to authorize the delisting of a security, unless the delisting is in breach of -

Delisting of
securities.

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

Appointment
of auditor.

41. (1) A self-regulatory organization shall, subject to the approval of the Council, appoint an auditor to audit its financial affairs.
- (2) A self-regulatory organization shall require each of its members to appoint an auditor who shall -
- (a) examine the member's financial affairs in accordance with the rules of the organization; and
 - (b) report the results of the examination to the auditor of the organization.
- (3) An auditor appointed under subsection (1) or (2) shall be a member, in good standing, of the Institute of Chartered Accountants of Guyana.
- (4) The auditor of a self-regulatory organization shall furnish to the Council on request a copy of a report received by him under subsection (2).

Keeping and
inspection of
records, etc.

42. (1) A self-regulatory organization shall -
- (a) make and keep such records in such form and for such periods as the Council may prescribe;
 - (b) file with the Council any prescribed report in the prescribed form; or
 - (c) disseminate to the public a report referred to in paragraph (b), and shall upon request, in writing, furnish the Council with a copy of, or an extract from, any prescribed record.
- (2) The Council may at any time authorize a person in writing to -
- (a) inspect the records of a self-regulatory organization and to examine the financial affairs of the organization or any of its members;
 - (b) prepare such financial or other reports as the Council requires.
- (3) A self-regulatory organization shall -
- (a) produce and furnish a person authorized by the Council under subsection (2) with a copy of any record referred to in subsection (1) or any other record that he reasonably requests; and
 - (b) answer any question he asks concerning those records.

Sanctions *re* rules.

43. (1) Where a self-regulatory organization -
- (a) contravenes its rules or this Act;
 - (b) is unable to comply with its rules or this Act;
 - (c) fails or is unable to enforce its rules or a provision of this Act that it is required to administer or enforce, or

- fails to comply with an order of the Council under section 36(1);
- (d) fails to observe standards of solvency prescribed by the Council; or
 - (e) any of the members of which is guilty of gross negligence or fraud, the Council may make an order -
 - (f) censuring the organization;
 - (g) limiting its activities, functions or operations; or
 - (h) suspending or revoking its registration.
- (2) Where a director, officer or employee of a self-regulatory organization contravenes the rules of the organization or this Act, the Council may make an order censuring him or suspending or removing him from office or employment with the organization.
44. (1) Subject to subsection (3) -
- (a) any person who is aggrieved by an act or dealing by a member of a self-regulatory organization or by any other market participant registered Part IV may lodge a complaint in respect thereof to the Council in writing addressed to the Chairman;
 - (b) the Council may investigate and adjudicate upon the complaint; and
 - (c) section 133 shall have effect in relation to such investigation and adjudication.
- (2) The Council may upon such adjudication make such order as it thinks just, including an order for the payment by the member of the self-regulatory organization or the registrant, as the case may be, of any sum by way of restitution or as compensation for any loss suffered by the complainant.
- (3) Subject to subsection (4). Where a person aggrieved as mentioned in subsection (1)(a) makes any complaint against a member of a self-regulatory organization or registrant he shall, if the Council proceeds to an adjudication upon it, abide by the outcome of such adjudication.
45. (1) Where a dispute involving transactions in securities arises between members of a self-regulatory organization, such dispute shall be referred to the board of directors or similar governing body (the "board") of the self-regulatory organization, and the board shall investigate the dispute, and shall make such order for the resolution of the dispute as it thinks fit.
- (2) It shall be the duty of each of the parties to the dispute forthwith to inform the Council in writing of the existence of the dispute and to deliver or cause to be delivered to the other

Complaints.

Disputes between
member
companies.

party or parties to the dispute, within twenty-four hours of such notice to the Council, a copy of the notice given to the Council of the dispute.

- (3) Where a member is aggrieved by the decision of the board under subsection (1), the member may, within fourteen days of the receipt of such decision, appeal to the Council.
- (4) Where the Council adjudicates in a matter referred to it under subsection (3), the decision of the Council shall be final and no appeal shall be brought in respect thereof.
- (5) The Council may, by any adjudication under this section, order the payment by any party to the dispute of any sum of money, including a sum to cover costs, as the justice of the case may in the opinion of the Council require.

PART IV REGISTRATION OF MARKET PARTICIPANTS

Registration
required for
membership or
licensing.

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

Registration to
carry on business.

- 47. (1) Subject to this Act, no person shall carry on business, or hold himself out, as -
 - (a) a broker;
 - (b) a dealer;
 - (c) a trader;
 - (d) an underwriter;
 - (e) an investment adviser;
 - (f) a securities intermediary; or
 - (g) a securities company,
 unless such person is registered as such with the Council in accordance with this Act and, except in the case of an underwriter or an investment adviser, that person is the holder of a valid license issued by a self-regulatory organization.
- (2) Where an applicant -
 - (a) is considered by the Council to be suitable for registration in the capacity applied for; and
 - (b) pays the prescribed fee,
 the Council shall register the applicant and issue him a certificate of registration in the prescribed form.
- (3) In this Part, a person possessing "basic qualifications" shall -
 - (a) if an individual, be at least twenty-one years of age, resident in Guyana and of good character;

- (b) if a company, be incorporated in Guyana or incorporated in any other State and be registered in Guyana;
 - (c) not have had a receiving or bankruptcy order made against him which remains undischarged;
 - (d) if a company, not have a receiver or receiver manager appointed in respect of its undertaking;
 - (e) not have interests direct or indirect which may conflict with or be likely to affect the conduct and integrity of his business in securities;
 - (f) not be a person who has been suspended from dealing on or expelled from any stock exchange or self-regulatory organization;
 - (g) if an individual, have such experience in the securities industry and such other qualification as the Council may from time to time prescribe;
 - (h) if a company, have as a director or in its full time employment an individual who -
 - (i) has been awarded a degree or professional qualification in economics, banking, law, accountancy, business administration or chartered secretaryship from a university or other educational institution within or without of Guyana recognized by the Council; or
 - (ii) has such experience in the securities industry and such other qualification as the Council may from time to time prescribe.
- (4) The Council may suspend or revoke the registration of a person for the following reasons -
- (a) if he ceases to carry on the business for which he registered;
 - (b) if he obtained or maintains registration by the concealment or misrepresentation of any fact which is, in the opinion of the Council, material to his application for registration or to his suitability to be registered;
 - (c) if his registration has been made by mistake. however such mistake arose;
 - (d) if he had defaulted in the payment of any moneys due to a self-regulatory organization, the Council, or to any other market participant;
 - (e) if a levy of execution in respect of him has not been satisfied;
 - (f) if he is convicted of an offence involving fraud or dishonesty;
 - (g) if he contravenes, or fails to comply with, any condition or restriction applicable in respect of his registration or this Act;

- (h) if he fails adequately to supervise or to conduct the activities of any person acting on his instructions or on his behalf;
 - (i) if he ceases to meet a requirement of subsection (3) regarding his basic qualifications.
- (5) The Council shall not refuse to register an applicant without giving the applicant an opportunity to be heard, and where the Council refuses to register an applicant, it shall notify the applicant in writing of the reasons for so doing.
- (6) The Council shall maintain a register of all persons registered with the Council.
- (7) The Council shall -
 - (a) by the 31st March of every year prepare a list of all valid registrants, by class of registration, which shall be published in the Gazette and in a daily newspaper circulating in Guyana;
 - (b) permit any person upon the payment of the prescribed fee, to inspect and to make extracts of any entry in the register referred to in subsection (6) during normal business hours.
- (8) Notwithstanding any other provision of this Part to the contrary, but subject to the provisions of this Act relating to the discipline of a registrant, persons who immediately before the commencement of this Act were licensed to conduct a "financial business" as provided in section 3 of the Financial Institutions Act 1995 are deemed to be registered as securities companies under this Act.
- (9) A person who is deemed to be registered under subsection (8) shall, within six months of the commencement of this Part, comply with the requirements of this Act and upon failure to do so shall cease to be registered, but shall be entitled to apply for registration whenever he is able to meet those requirements.
- (10) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years.

No. 1 of 1995.

Application for
registration as
securities
intermediary.

- 48. (1) Every application for registration as a securities intermediary shall be made to the Council in the prescribed form and shall be accompanied by such fees as are prescribed.
- (2) Every applicant for registration as a securities intermediary shall have the basic qualifications mentioned in section 47(3).

- (3) Where an applicant wishes to be registered as a securities intermediary, other than solely as a trader, in respect of -
- (a) equity securities only, he shall have such minimum paid up capital as may be prescribed by the Council; or
 - (b) equity securities and other securities, or, as the case may be, other securities only, he shall have such minimum paid up capital as may be prescribed by the Council.
- (4) In addition to the provisions of subsections (1) to (3) -
- (a) every application for registration as a trader in securities shall be signed jointly by the applicant and by a broker of the securities company under whose direction and supervision it is proposed that the applicant operate as a trader; and
 - (b) the Council may decline to register any person as a trader unless it is satisfied that he is a fit and proper person to be registered and may make such inquiries and require the applicant and the broker who joins with him in making the application to produce such information as it may deem necessary for the purpose.
49. The Council may suspend or revoke the registration of a securities intermediary for any reason mentioned in section 47(4).
50. (1) So long as the performance of services as an investment adviser is solely incidental to its or his principal business or occupation as mentioned in this subsection, the following persons may act as investment advisers without registration as an investment adviser under this Part -
- (a) an insurance company registered under the Insurance Act 1998;
 - (b) a financial institution licensed under the Financial Institutions Act 1995;
 - (c) an attorney-at-law or an accountant;
 - (d) a publisher of, or writer for, a *bona fide* newspaper, news magazine, or business or financial publication that is of general and regular paid circulation, distributed only to subscribers to it for value or to purchasers of it, who -
 - (i) gives advice as an adviser either as such publisher or writer only or as such publisher or writer and as an attorney-at-law or an accountant;
 - (ii) discloses in the publication any direct or indirect interest which he has in any of the securities in respect of which he gives advice; and
 - (iii) receives no commission or other consideration for giving the advice other than for acting in his capacity as a publisher or writer; or
 - (e) a person or class of persons prescribed.

Suspension on
revocation of
registration as
securities company.

Exemption from
registration for
certain investment
advisers.

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- (2) For the purposes of this section, "accountant" means an individual who is a member in good standing of the Institute of Chartered Accountants of Guyana.

Application for
registration as
securities company.

51. (1) Every application for registration as a securities company shall -
- (a) be made to the Council in the prescribed form;
 - (b) clearly indicate the class or classes of business to be undertaken by the company; and
 - (c) be accompanied by such fees as are prescribed.
- (2) Every applicant for registration as a securities company shall have the basic qualifications set forth in section 47(3).
- (3) Where an applicant wishes to be registered as a securities company in respect of -
- (a) equity securities only, it shall have such minimum paid up capital as may be prescribed by the Council; or
 - (b) equity securities and other securities, or, as the case may be, other securities only, it shall have such minimum paid up capital as may be prescribed by the Council.
- (4) Where a company is registered as a securities company, an individual mentioned in paragraph (h) of section 47(3) shall be responsible for the discharge of the obligations of the securities company in relation to each class of business for which it is registered.

Suspension or
revocation of
registration as
securities
company

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

Suspension of
registration on
prosecution of
market participant.

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

Effect of
cancellation,
suspension or
revocation.

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

Indemnity
insurance.

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

PART V
REGISTRATION OF ISSUERS AND SECURITIES

56. (1) From the date of commencement of this Part, all public companies shall become reporting issuers and shall, within ninety days from that date, file with the Council a registration statement in the prescribed form.
- (2) A person who proposes to issue securities to the public shall register with the Council as a reporting issuer and file a registration statement in the prescribed form and within the prescribed time.
- (3) A reporting issuer shall amend its registration statement annually so that the information contained therein is current as of the end of its most recent financial year.
- (4) An issuer in its registration statement shall omit or amend any information that is of a type prohibited by regulation.
- (5) An issuer may include in its registration statement any information that is not of a type prohibited by regulation.
- (6) Where a reporting issuer ceases to be a public company, the Council may on its own motion or on application by the issuer or another interested person make an order declaring, subject to such conditions as it considers appropriate, that the issuer is no longer a reporting issuer.
- (7) This section shall not apply to any issuer which is a government entity.
- (8) In subsection (7) and in section 57(3)(b), "government entity" means the Government of Guyana, the Bank of Guyana and municipal corporations.
57. (1) Subject to subsection (2), no security shall be offered to the public or listed with any self-regulatory organization unless it is registered with the Council by means of a registration statement that has become effective.
- (2) A unit issued by a unit trust scheme, or a mutual fund, in accordance with the terms of a prospectus for which a receipt has been issued by the Council, is deemed to be registered with the Council.
- (3) Any security may be registered with the Council by filing a registration statement signed -

Registration
statements of
issuers.

Registration of
securities.

- (a) by the principal executive officer of the issuer and at least two members of the board of directors of the issuer; or
 - (b) in the case of a government entity, by the underwriter or designated agent.
- (4) Signatures appearing on the registration statements shall be presumed to have been affixed to that statement by authority of the person whose signature is so affixed unless the contrary is proved by the person denying the validity of the signature.
- (5) A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered or listed, as the case may be.
- (6) At the time of filing a registration statement pursuant to subsection (3) the applicant shall pay to the Council such fees as may be prescribed by the Council.
- (7) The filing with the Council of a registration statement or any amendment thereto under this section shall be deemed to have taken place upon receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless accompanied by the amount of the fee required under subsection (6).
- (8) The information contained in or filed with any registration statement shall be made available to the public in such manner as may be prescribed.
- (9) The effective date of a registration statement shall be determined by the Council.
- Annual Reports. 58. (1) A reporting issuer shall, within four months after the end of its financial year-
- (a) file with the Council a copy of its annual report containing the information prescribed by the Council and any other information that is not of a type prohibited by regulation; and
 - (b) send to each of its security holders such financial statements as the Council may prescribe.
- (2) A reporting issuer shall file such other reports in such form as may be prescribed.
- (3) Subject to subsection (4), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall, as soon as practicable but in any event no later than seven days after the change occurs, file with the Council and issue a press

release authorized by a senior officer that discloses the nature and substance of the change.

- (4) Subject to subsection (5), subsection (3) shall not apply where -
 - (a) the reporting issuer is of the opinion that the disclosure required by subsection (3) would be unduly detrimental to its interests and advises the Council in writing within seven days of the change and the reasons why it is of the opinion that there should not be a press release; or
 - (b) the material change in the affairs of the reporting issuer consists of a decision to implement a change made by the directors of the issuer and the directors and senior management of the issuer have no reason to believe that any person with knowledge of the material change has made or intends to make use of that knowledge in purchasing or selling securities of the issuer.
- (5) Where the Council is of the opinion that the disclosure of the material change would not be unduly detrimental to the interests of a reporting issuer, it may, after giving the reporting issuer an opportunity to be heard, require disclosure to the public of the material change.

PART VI DISTRIBUTIONS

- 59. (1) For the purpose of this Part, an advertisement offers securities if -
 - (a) it invites a person to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities; or
 - (b) it contains information calculated to lead directly or indirectly to a person entering into such an agreement.
- (2) In this Part -
 - (a) "distribution" in relation to any securities includes an offer to sell securities;
 - (b) "offer to sell" includes an attempt or offer to dispose of or any solicitation of an offer to buy a security;
 - (c) "person engaged in the distribution" in relation to any securities, means the issuer, a registrant or any other person who issues or is to issue securities or is engaged in a distribution to which this Part applies;
 - (d) "sophisticated purchaser" means -
 - (i) a person who participates as principal in any trade the consideration of which is no less than five hundred thousand dollars;
 - (ii) a person who -

Definition and
construction.

- (A) has access to substantially the same information concerning the issuer that is required in a prospectus under section 64(1) and (2); and
- (B) is able to evaluate a security as an investment on the basis of information provided to him by the seller by virtue of his net worth and advice which may be available to him from an investment adviser who receives no remuneration from the issuer or selling security holder in connection with the distribution; or
- (iii) an officer or director of the issuer or his spouse, parent, brother, sister or child.

- Block distribution circular.
60. In this Part, "block distribution circular" means a prospectus required in connection with a distribution of previously issued securities acquired under a distribution exempted from the prospectus requirements under section 67(2).
- Prospectus required.
61. Subject to section 62, no person shall distribute a security unless a prospectus or a block distribution circular has been filed with and a receipt therefor has been issued by the Council.
- Offers to sell a security.
62. (1) No person shall offer to sell a security in connection with a distribution unless the offer is made by means of -
- (a) a prospectus or block distribution circular for which a receipt has been issued by the Council; or
 - (b) an advertisement -
 - (i) identifying the security distributed, a person from whom a document specified in paragraph (a) may be obtained, and a person through whom orders will be executed; and
 - (ii) containing whatever other information the Council permits or may prescribe.
- (2) Notwithstanding subsection (1), a person engaged in the distribution may solicit expressions of interest from prospective purchasers with respect to a proposed distribution if he notifies the Council in writing that he intends to do so and identifies the issuer, the class of persons to whom the security is to be offered and the security proposed to be distributed.
- Delivery of a prospectus.
63. (1) No person engaged in the distribution shall sell a security of a class that is the subject of a filing pursuant to section 61 and for which a receipt has been issued by the Council, within ninety days of the date of the receipt, unless he sends or delivers to the purchaser of the security a prospectus or block distribution circular within two business days after the agreement of sale is made.

- (2) The Council may, in respect of reporting issuers, prescribe a shorter period than that specified in subsection (1).
 - (3) An agreement referred to in subsection (1) is not binding on the purchaser if the person engaged in the distribution receives not later than two business days after the purchaser received the prospectus or block distribution circular written notice that the purchaser intends not to be bound by the agreement.
 - (4) A person who files a prospectus or block distribution circular pursuant to section 69 shall provide copies during the period specified in subsection (1) upon request of a person engaged in the distribution and shall furnish to that person a reasonable number of copies of it without charge.
 - (5) For the purposes of this section, the receipt of a prospectus or block distribution circular by a person who acts solely as agent of the purchaser with respect to the purchase of a security referred to in subsection (1) is deemed to be a receipt by the purchaser as of the date on which the agent received the prospectus or block distribution circular.
64. (1) A prospectus shall contain such information and comply with such other requirements as may be prescribed, and in the absence of regulations made by the Council, the First Schedule under Part III, Division D of the Companies Act 1991 shall govern the contents of any prospectus.
- (2) In addition to the information required to be included in a prospectus by virtue of subsection (1), a prospectus shall contain such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of -
 - (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
 - (b) the rights attaching to those securities,
 being information which is within the knowledge of any person responsible for the prospectus or which it would be reasonable for him to obtain by making enquiries.
 - (3) In determining what information is required to be included in a prospectus by virtue of this section regard shall be had also -
 - (a) to the nature of the securities and the issuer of the securities;
 - (b) to the nature of the persons likely to consider their acquisition;
 - (c) to the fact that certain matters may reasonably be expected to be within the knowledge of professional

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advisers of any kind whom those persons may reasonably be expected to consult; and

- (d) to any information available to investors or their professional advisers by virtue of any written law or by virtue of requirements imposed by the Council.

Supplementary
prospectus.

65. (1) Where a prospectus has been filed under section 61 in respect of any proposed distribution or any offer of securities and at any time during which an agreement in respect of those securities can be entered into in pursuance of that offer -
- (a) there is a material change affecting any matter contained in the prospectus the inclusion of information in respect of which is required by virtue of section 64(1) and (2);
 - (b) a material fact occurs the inclusion of information in respect of which would have been so required if it had arisen when the prospectus was prepared,
- then the person who delivered the prospectus for registration to the Council shall deliver to it for registration a supplementary prospectus containing particulars of that material change or fact as the case may be.
- (2) Where a supplementary prospectus is required to be delivered, no offers and sales in reliance on the original prospectus may be made until the supplementary prospectus has been delivered to the Council for registration and a receipt issued therefor, and every prospectus thereafter sent or delivered to any person shall be accompanied by the supplementary prospectus.
- (3) In lieu of a supplementary prospectus, the person who delivered the original prospectus may deliver to the Council for registration, and upon issue of a receipt therefor use, an amended prospectus as provided in section 70, and the provisions of this Part applicable to a supplementary prospectus shall apply to an amended prospectus.
- (4) Where the person who delivered the prospectus for registration is not aware of the material change or fact in question he shall not be under any duty to comply with subsection (1) unless he is notified of it by a person responsible for the prospectus, but any person responsible for the prospectus who is aware of that material change or fact shall be under a duty to give him notice of it.
- (5) Section 63(1) applies also as respects matters contained in a supplementary prospectus filed under this Part in respect of the securities in question.

66. (1) A prospectus that invites subscriptions for or the purchase of securities of an issuer, and that includes a statement purporting to be made by an expert, shall not be issued unless - Expert's consent.
- (a) that expert has given, and has not before delivery of a copy of the prospectus withdrawn, his written consent to the inclusion of the statement in the form and context of which it is included in the prospectus; and
 - (b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent, and accordingly, a person is not to be deemed to have authorized or caused the issue of a prospectus by reason only of his having given the consent required by paragraph (a) to the inclusion in the prospectus of a statement purporting to be made as an expert.
67. (1) Sections 61 to 63 do not apply to a distribution - Exceptions.
- (a) by an issuer where the purchaser is an issuer acting as principal;
 - (b) where the purchaser is an underwriter of the security being distributed;
 - (c) by an issuer of a security that is distributed to holders of its securities as a dividend;
 - (d) by an issuer of a security to holders of its securities as incidental to a reorganization, winding up or distribution of its assets for the purpose of winding up its affairs;
 - (e) by an issuer of a security pursuant to the exercise of a right to acquire the security, which right was previously granted by the issuer, if no commission or other remuneration is paid or given in respect of the distribution except for administrative or professional services or for services, other than the solicitation of investors, performed by a registrant;
 - (f) by an issuer of a right, transferable or otherwise, granted by it to holders of its securities to purchase additional securities of its own issue, and of securities pursuant to the exercise of such a right -
 - (i) if the issuer files with the Council a notice in the prescribed form that is to be sent to its security holders; and
 - (ii) the Council does not inform the issuer in writing within fourteen days of the filing that it objects to the offer; or
 - (iii) the issuer files with the Council and sends to its security holders information relating to the securities that is satisfactory to the Council;
 - (g) by an issuer of a security that is exchanged by or for the account of the issuer with another issuer or the security holders of another issuer pursuant to -
 - (i) a statutory amalgamation or arrangement; or

- (ii) a statutory procedure by which one issuer takes title to the assets of another issuer that loses its existence by operation of law or by which the existing issuers merge into a new issuer;
 - (h) by an offeror pursuant to a take-over bid;
 - (i) by or for the issuer or owner by means of an isolated sale that is not made in the course of continued or successive sales of the same security;
 - (j) by an issuer of securities of its own or an associate's issue to its employees, if -
 - (i) the employees are not induced to purchase the securities by expectation of employment or continued employment with the issuer; and
 - (ii) no commission or other remuneration is paid or given in respect of the distribution except for professional services or for services other than the solicitation of employees, performed by an issuer;
 - (k) where the Council makes an order declaring that the cost of providing a prospectus outweighs the resulting protection to investors, but in such circumstances the Council may make the order subject to any conditions it considers appropriate including conditions determining the standards of civil liability applicable to the offer;
 - (l) issued or guaranteed by the Government of Guyana, the Bank of Guyana or a municipal corporation or statutory body in Guyana;
 - (m) by a person declared an exempt purchaser by order of the Council who purchases as principal or as trustee for accounts fully managed by it; or
 - (n) in such other circumstances as the Council may prescribe.
- (2) Sections 61 to 63 do not apply to a distribution to not more than fifty purchasers, each of whom is a sophisticated purchaser if -
- (a) the distribution is previously notified in writing to the Council and is not accompanied by an advertisement other than an announcement, as prescribed by the Council, of its completion; and
 - (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services performed by an issuer.
- (3) Sections 61 to 63 do not apply to a limited offering.
- (4) For the purposes of this section, "limited offering" means an offer within such time as may be prescribed by the Council to not more than fifty purchasers of the securities distributed where -

- (a) the issuer or selling security holder obtains an agreement from each purchaser that is filed with the Council under which each purchaser agrees to file or cause to be filed with the Council a prospectus with respect to the securities if a sale of the securities purchased by him results in there being more than fifty owners of the distributed securities within two years of the completion of the distribution or such other time as the Council prescribes; and
 - (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services other than the solicitation of investors by an issuer.
- (5) For the purposes of this Act, a person who purchases a security pursuant to an exemption under subsection (3) from a person whom he knows to have acquired the security in a trade referred to in this section is in the same position as his seller for the remainder of the period specified in the definition of a limited offering with regard to the security.
- (6) The Council may seek an order of the Court against any person who has entered into any such agreement as is referred to in subsection (4)(a) and upon proof of the filing of such agreement with the Council, shall be entitled to an order accordingly.
- (7) The Council may prescribe -
 - (a) further conditions for a limited offering;
 - (b) that such statement as it thinks fit shall be printed on a certificate for a security sold pursuant to this section; and
 - (c) that a person who makes a limited offering and a purchaser of a security of such an offering shall file such report as it thinks fit.
- (8) Sections 61 to 63 do not apply to a trading transaction.
- (9) For the purposes of this section, "trading transaction" means a distribution of a security of a reporting issuer executed through a registrant where -
 - (a) the issuer has been registered under Part V for at least one year, or such other period as the Council may prescribe, immediately preceding the distribution and the issuer has complied with the filing requirements of this Act;
 - (b) no selling or promotional expenses are incurred in connection with the distribution except for services customarily performed by a registrant in connection with a trade in the market; and

- (c) the sales by or on behalf of the issuer or selling security holder do not during a prescribed period exceed -
 - (i) an amount in dollars;
 - (ii) a percentage of trading volume;
 - (iii) a percentage of outstanding securities of the class; or
 - (iv) any combination of the limits referred to in subparagraphs (i) to (iii), prescribed by the Council.

- (10) Where trades made pursuant to this section result in an increase in the trading activity of securities of an issuer, the Council may make an order -
 - (a) requiring the issuer to file and disseminate such information as it believes necessary for the protection of investors; and
 - (b) reducing the number of securities of the issuer that may be distributed in trading transactions during a period prescribed pursuant to subsection (9)(c).

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

Receipt for
prospectus.

- 68. (1) Subject to subsections (2), (3) and (5), the Council shall issue a receipt for a prospectus within a reasonable time after the date of the original filing of a prospectus filed pursuant to section 61 or 69(1).
- (2) The Council may refuse to issue a receipt for a prospectus -
 - (a) if it appears to the Council that -
 - (i) the prospectus contains a misrepresentation;
 - (ii) the prospectus fails to disclose any material fact which may be required under this Part; or
 - (iii) the distribution in connection with which the prospectus is filed is deceptive;
 - (b) if an unconscionable consideration or illegal commission has been or is intended to be given for promotional purposes or for the acquisition of the security;
 - (c) if it appears to the Council that the past conduct of the issuer or of a person who exercises or is reasonably considered by the Council likely to exercise influence over its management or policies suggests to the Council that the business of the issuer is likely to be conducted in a manner that is not honest or financially responsible or that may be unfair to holders of its securities;
 - (d) if the proceeds that the issuer will receive from the distribution, together with its other resources, do not

- appear sufficient to accomplish the purpose of the distribution stated in the prospectus;
- (e) if an expert who has prepared or certified a part of the prospectus or report used in connection with it is not acceptable to the Council; or
 - (f) if the Council considers that the distribution would be prejudicial to the public interest.
- (3) The Council may refuse to issue a receipt for a block distribution circular in the circumstances specified in subsection (2)(a) to (d) or (f).
 - (4) If the Council refuses to issue a receipt for a prospectus and the person who filed the prospectus so requests, the Council shall give him an opportunity to be heard.
 - (5) The Council may impose on a distribution in connection with which it issues a receipt for a prospectus any condition which in the opinion of the Council is necessary for the protection of investors including, without limiting the generality of the foregoing -
 - (a) a condition that outstanding securities of the issuer be held in escrow upon such terms as the Council may specify;
 - (b) a condition that the proceeds of a distribution which are payable to the issuer may be held in trust until such amount as may be specified is received for the issuer;
 - (c) a condition that no sales pursuant to the distribution may be completed before such time as may be specified by the Council.
69. (1) Where a distribution of securities does not commence within ninety days of the date on which a receipt for the prospectus is issued by the Council, the distribution shall cease until such time as a new prospectus is filed with a receipt therefor issued by the Council.
- (2) For the purposes of this section, a distribution commences when twenty-five per cent of the securities proposed to be distributed are sold and paid for.
 - (3) Subject to subsections (4) and (5), a distribution shall not continue longer than one year and twenty days from the date of the receipt for the prospectus or block distribution circular relating to it unless the Council issues a new receipt for a current prospectus or block distribution circular, in which case the period runs from the date of the latter receipt.
 - (4) The Council may prescribe that the period specified in subsection (3) shall be reduced to not less than six months.

Cessation of
distribution.

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

Amendment of
prospectus.

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

PART VII MARKET CONDUCT AND REGULATION

No stamp duty.

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

Market rigging
transactions.

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

Inducement to
purchase or sell
securities by
dissemination of
information.

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

Employment of
deceptive device
etc.

74. No person shall, directly or indirectly, in connection with the purchase or sale of any security -
- (a) employ any device, scheme or artifice with the intention to defraud;
 - (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit on any person;
 - (c) make any untrue statement of a material fact or omit to state a material fact with the intention to mislead.

Restrictions on
recommendation.

75. (1) A registrant shall not recommend a trade in a security to a customer unless he has reasonable grounds to believe that the recommendation is suitable for the customer on the basis of -

- (a) information furnished by the customer after reasonable inquiry as to his investment objectives, financial situation and needs; and
 - (b) any other information known to the registrant.
 - (2) Subsection (1) does not apply to a registrant in respect of the -
 - (a) execution of an unsolicited order for a customer; or
 - (b) publication of a research report that recommends generally a trade in a security.
76. (1) No registrant or employee of a registrant shall effect trades that are excessive in volume or frequency with or for a customer in respect of whose trading he is in a position to exercise determinative influence by reason of the customer's willingness to accept his recommendations. Excessive trading.
- (2) No person who has discretionary authority over or is a trustee for an account of another shall effect trades that are excessive in volume and frequency.
- (3) For the purposes of this section, whether trades are excessive in volume or frequency shall be determined on the basis of such factors as the amount of profits or commissions of the registrant, employee or other person in relation to the size of the customer's account, the needs and objectives of the customer as ascertained on reasonable inquiry and the pattern of trading in the account.
77. (1) The Council may prescribe standards for the conduct of a registrant in relation to a customer to prevent - Council may prescribe standards of conduct for registrants.
 - (a) a conflict of interest; or
 - (b) any other conduct that would enable a registrant to treat a customer unfairly.
- (2) The Council may prescribe standards for the conduct of a registrant in relation to the custody or lending of any money or security held for a customer.
78. A registrant who recommends in writing a trade in a specific security shall include with the recommendation a prescribed statement of any direct or indirect financial or other interest in the security or a trade in the security, held by the registrant. Disclosure of interests by registrant.
79. The Council may prescribe that a registrant who exercises investment discretion with respect to a customer's account shall make such disclosure as may be prescribed to the customer as to his policies and practices relating to the payment of commissions for trades in securities. Disclosure of policies and practice.

Trust accounts.

80. (1) A securities company, or a securities intermediary who is not acting in the employment of a securities company, shall establish and keep in a financial institution in Guyana one or more trust accounts designated as such into which it shall pay -
- (a) all amounts (less any commission and other proper charges) that are received from or on account of any person, other than another securities company or securities intermediary, for the purchase of securities not delivered to the securities company or securities intermediary, within such time as prescribed by the Council;
 - (b) all amounts (less any commission and other proper charges) that are received on account of any person, other than a securities company or securities intermediary, from the sale of securities and not paid to that person or as that person directs, within such time after receipt of such amounts as may be prescribed by the Council.
- (2) No money shall be withdrawn from a trust account established under subsection (1), except for the purpose of making payment on behalf of or to the person lawfully entitled thereto or for any other purpose duly authorized by law.
- (3) Nothing in this section shall be construed as affecting in any way any lawful claim or lien which any person may have against or upon any monies held in a trust account, or against or upon any monies received for the purchase of securities, or from the sale of securities, before such monies are paid into a trust account.
- (4) Every director of a securities company, and every securities intermediary that fails to comply with, or contravenes, any of the provisions of this section is guilty of an offence and is liable, on summary conviction, to a fine of one hundred thousand dollars and to imprisonment for one year.

Registrant to send documents to beneficial owner.

81. (1) Where securities of an issuer are registered in the name of, but not beneficially owned by, a registrant or his nominee, the registrant shall send to the beneficial owner of the securities a copy of any document sent to him or his nominee as registered security holder forthwith after receipt thereof, unless the beneficial owner instructs him in writing that the document, or documents generally described, need not be sent.
- (2) A person who sends a document to registered security holders pursuant to this Act shall furnish to a registrant forthwith upon request sufficient copies of the document to enable him to comply with subsection (1) and, subject to having been

informed of the number of beneficial owners for whom the registrant is the representative, shall indemnify him for the reasonable costs of doing so.

82. (1) Subject to subsection (2), a registrant who trades in security with or for a customer shall send him immediately after the completion of the trade a written confirmation containing the information prescribed by the Council. Confirmation to be sent to customer.
- (2) The Council may prescribe that a registrant who provides a service of a continuous nature may send, instead of a confirmation as referred to in subsection (1), a periodic statement at such times and containing such information as may be prescribed.
- (3) Notwithstanding subsection (2), the registrant shall record the names of any or all customers for whom the registrant has executed a transaction immediately upon its completion.
83. (1) Every securities exchange or other self-regulatory organization shall keep a record of each trade made through its facilities and of each trade reported to it by its members, showing the time when it took place and any other information prescribed by the Council. Records of transactions.
- (2) On the request of a person who produces a written confirmation of a trade executed through its facilities, a self-regulatory organization shall furnish to him -
- (a) forthwith, if the trade was executed within thirty days of the request; and
- (b) within a reasonable time if the trade was executed more than thirty days before the request,
- details of when the trade took place and of any other matter contained in the confirmation of which the self-regulatory organization acquired knowledge in the ordinary course of its business.
84. A registrant who has acted in connection with a trade in a security shall on the request of the Council disclose to it the name of the person with or through whom the security was traded. Notification to Council.
85. (1) In this section, "residence" includes a building or part of a building in which the occupant resides permanently or temporarily and any appurtenant premises. Restriction on trading at residence.
- (2) No person shall -
- (a) attend at any residence without being invited by an occupant of the residence; or
- (b) make an unsolicited telephone call to any residence within Guyana, for the purpose of trading in a security.

- (3) Subsection (2) shall not apply where the person calls at or telephones the residence -
- (a) of a close personal friend, a business associate or a client with whom or on whose behalf the person calling or telephoning has been in the habit of trading securities; or
 - (b) of a person who has received a copy of a prospectus filed under this Act and has requested that information respecting a security offered in that prospectus be furnished to him by the person calling or telephoning.

Control of
advertisements.

86. (1) The Council may make an order requiring a registrant to send to it a copy of each advertisement that he proposes to use in connection with a trade in a security at least seven days before it is used, if the Council reasonably believes that the registrant's past conduct in connection with such advertisements makes review of them by it necessary for the protection of investors.
- (2) The Council may make an order prohibiting the use of an advertisement sent to it pursuant to subsection (1) or requiring that it be altered before it is used if the Council is of the view that the advertisement is likely to mislead the public.
- (3) In this section, "advertisement" includes any material designed to make a sales presentation to a purchaser whether or not it is published or presented to a purchaser but does not include a prospectus or block distribution circular.

Seller of security
to declare non-
ownership.

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

Declaration as to
short position.

88. (1) A person who places an order for the sale of a registered security through a registered securities company or securities intermediary broker acting on his behalf and who -
- (a) does not own the security; or
 - (b) if he is acting as agent, knows his principal does not own the security,
- shall, at the time of placing the order to sell, declare to the registered securities company or securities intermediary that he or his principal, as the case may be, does not own the security, and that fact shall be disclosed by the securities company or securities intermediary in the written confirmation of sale.

- (2) Subject to this Act and the regulations, for the purposes of subsection (1), a security which is not owned by a person includes, but is not limited to, a security that -
- (a) has been borrowed by that person;
 - (b) is subject to a any restriction on its sale, including a resale agreement to a third party;
 - (c) may be acquired by that person on the exercise of a right to acquire the security by purchase conversion, exchange or any other means; or
 - (d) is deemed not to be owned by that person pursuant to regulations.
89. (1) The Council may prescribe standards for the conduct of a registrant who is not a member of a self-regulatory organization. Standards of conduct for unlicensed persons.
- (2) The Council may prescribe that a registrant shall keep a record of all trades executed by him other than through the facilities of a securities exchange or other self-regulatory organization and shall file with it a report of the trades in the prescribed form.
- (3) The Council may prescribe standards governing trading in a security that has been distributed and is not listed for quotation on or with a self-regulatory organization.
90. (1) The Council may prescribe that a registrant shall - Information to be filed with the Council.
- (a) file with it such information about a missing, lost, counterfeit or stolen security as may be prescribed; and
 - (b) submit an inquiry to it for information filed pursuant to paragraph (a) in relation to a security -
 - (i) which is in the registrant's custody or control;
 - (ii) for which he is responsible; or
 - (iii) in respect of which he is effecting, clearing or settling a trade.
- (2) Information filed with the Council pursuant to subsection (1)(a) shall be made available forthwith on request to a registrant, financial institution or other prescribed person.
- (3) A failure to comply with subsection (1)(b) does not affect a person's status as a *bona fide* purchaser of a security.
91. A registrant shall not use the name of another registrant on letterheads, forms, advertisements or signs, as a correspondent or otherwise, unless he is a partner, officer or agent of, or is authorized in writing by, the other registrant. Prohibition on use of name of another registrant.
92. A person shall not represent that he or any other person is registered under this Act unless - Representation as to registration.

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

Holding out by
unregistered
person.

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

Prohibited
characterization of
actions by Council.

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

PART VIII SIMPLIFIED CLEARING FACILITIES

Application of part.

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

Definitions.

96. In this Part -

- (1) "blocked account" means an account of a participant over which a person other than the participant exercises control pursuant to procedures established under section 100;
- (2) "interested person" means a person who has an interest in a security in an account of a participant in a clearing agency;
- (3) "in writing" includes production in machine readable form;
- (4) "pledge" means a contractual interest in a security that is delivered to, retained by or deemed to be in the possession of a creditor to secure payment of a debt or other obligation and includes a mortgage or mortgage and pledge of a security.
- (5) "registered owner" means a person who is or is presumed to be shown on the securities register of an issuer as the owner of a security certificate issued by it; and
- (6) "security certificate" means an instrument issued by or on behalf of an issuer that is evidence of a security.

Use of clearing
agency as
registered owner
of security.

97. (1) On the issue of a security, an issuer may deliver a security certificate directly to a clearing agency as registered owner of the security if -
- (a) the issuer has written authorization signed by or on behalf of the beneficial owner and the clearing agency;
 - and

- (b) the delivery of the certificate is evidenced by a written confirmation signed by the clearing agency and sent not more than three days after receipt of the certificate to the beneficial owner or his agent.
 - (2) On the issue of a security, an issuer may, instead of delivering a security certificate, issue a security to a registered clearing agency as registered owner by means of record entries if -
 - (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;
 - (b) the issue is further evidenced by a written confirmation executed by the clearing agency and sent not more than three days after issuance, to the beneficial owner of the security or his agent; and
 - (c) the issue is recorded as of the effective date of issuance in the securities register of the issuer and the records of the clearing agency.
 - (3) A written confirmation referred to in subsection (1)(b) or (2)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities described therein.
 - (4) A clearing agency shall not make an entry in its records under this section respect of a security that is not fully paid.
98. (1) Immediately after receipt of a security certificate from a participant, a clearing agency shall deliver the certificate to the issuer and request the transfer of the securities evidenced by the certificate to the clearing agency.
- Transfer of securities through clearing agency.
- (2) Where a clearing agency presents a security certificate in proper form to an issuer and requests a transfer to it of the securities evidenced by the certificate, the issuer shall, if it has a duty to register the transfer, immediately enter the transfer in its securities register and deliver to the clearing agency a security certificate representing the securities and showing the clearing agency as registered owner.
 - (3) An issuer may, instead of issuing a security certificate under subsection (2), transfer a security to a clearing agency as the registered owner by means of record entries if -
 - (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;
 - (b) the transfer is further evidenced by a written confirmation executed by the clearing agency and sent not more than three days after issuance to the beneficial owner of the security or his agent; and

- (c) the transfer is recorded as of the effective date of issuance in the securities register of the issuer and the records of the clearing agency.

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

Transfer by
record entry.

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

Blocked accounts.

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

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

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

Effecting pledge by
record entry.

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

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

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

- (3) A clearing agency is not liable for any loss resulting from compliance with the instructions of a pledgee under

subsection (2) unless the clearing agency knows before the transfer that the pledgee is not entitled to the securities.

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

Effecting blocked account by record entry.

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

Security subject to restriction,

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

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

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

Blocking account by court order,

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

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

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

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

Limitation on rights of participant,

106. (1) On the receipt of a demand in writing from a participant for whom a security is held other than in a blocked account, for withdrawal of that security, a clearing agency shall within a

Withdrawal of security,

reasonable time, subject to any proceedings under section 111 obtain and deliver to the participant a security certificate in his name or a name designated by him evidencing the security.

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

Issuer's duty to
request list of
participants.

107. (1) Where a clearing agency holds a class of securities of an issuer that proposes to close its securities register or fix a record date in respect of the class for the purpose of determining security holders entitled -
- (a) to receive notice of or to vote at a meeting of security-holders;
 - (b) to receive payment of a dividend or interest; or
 - (c) to participate in a liquidation distribution,
- or for any other purpose, the issuer shall give the clearing agency such notice as may be prescribed of its intention to close its securities register or fix a record date.
- (2) The notice referred to in subsection (1) shall request from the clearing agency a list of the names of the participants for whom the clearing agency holds securities of the class mentioned in that subsection made up as of the date on which it proposes to close its register or fix a record date.
- (3) On receipt of a demand in writing from an issuer for a list of the names of participants for whom it holds securities of a class issued by the issuer, a clearing agency shall within seven days provide the issuer with a list setting out -
- (a) the names and addresses of; and
 - (b) the number or amount of securities of the class held for, each such participant made up as of the date specified in the demand.
- (4) On receipt of a demand from an issuer under subsection (3), a clearing agency shall send notice of the demand to each participant that is a securities company.
- (5) A participant that receives a notice sent pursuant to subsection (4) may -
- (a) furnish to the clearing agency or the issuer a list containing the name and address of all beneficial owners for whom the participant holds the securities and the number or amount of securities of the class so held; and
 - (b) instruct the clearing agency to furnish the list to the issuer or inform the clearing agency that it has done so itself.

- (6) Where a participant that receives a notice sent pursuant to the subsection (4) does not provide a clearing agency or the issuer with a list of all the beneficial owners for whom it holds securities referred to in the notice, the participant shall at its own expense obtain from the issuer and send to each such beneficial owner, who is not included in the list and who has not instructed it otherwise in writing, any dividend or interest or any document that the issuer wishes to send to its security holders.
- (7) A clearing agency that receives lists of beneficial owners under subsection (5) shall, before it furnishes the lists to the issuer, consolidate them into one list in a form that does not permit association of a beneficial owner with a participant, and the clearing agency may charge participants a reasonable fee for the consolidation.
- (8) A clearing agency shall treat as confidential any non-public information it receives under subsection (5) concerning the beneficial ownership of securities.
- (9) After receipt of a demand in writing from an issuer that has received a list of participants under subsection (3), a clearing agency shall provide the issuer with a current list made up as of a date subsequent to the demand showing any change in respect of the securities held for a participant since the date as of which the list under subsection (3) was made up.
- (10) An issuer is entitled to obtain free of charge from a clearing agency in any one calendar year four lists of participants under subsection (3) with respect to each class of securities held by the clearing agency, and the issuer shall pay the clearing agency a reasonable amount for
- (a) any additional cost attributable to a demand for a list made after the date when the issuer closed its securities register or fixed a record date; or
 - (b) any additional list.
- (11) An issuer is entitled to presume conclusively that a person named in a list obtained under this section is the owner of the securities of the issuer referred to in the list.
108. (1) After submitting a request in writing to a clearing agency, a beneficial owner of a security of an issuer and the owner's agent may during normal business hours examine a list of the records of the clearing agency that relate to any securities of the issuer held by it and may also make extracts therefrom without charge, and any other person may do so upon payment of reasonable fee.

Access to clearing
agency records.

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

Incorrect entry by
clearing agency.

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

- (2) Subject to subsection (3), a clearing agency is liable to compensate a person who incurs a loss as a result of an incorrect entry made in its records by reason of its error.

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

Liability in
extraordinary
circumstances.

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

Application to
court to rectify
records.

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

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

- (a) determining who is an interested person and the notice to be given to such a person;
- (b) dispensing with notice to any person;
- (c) determining the right to of a party to the proceedings to have his name entered or retained in or deleted or omitted from the records of a clearing agency;
- (d) directing that the records of a clearing agency be rectified;
- (e) directing that a clearing agency make an entry in its records to block an account; or
- (f) compensating any person.

Participation by
financial
institutions.

112. (1) A clearing agency may hold securities for a financial institution that is authorized under the law applicable to it, to

deliver or transfer any securities held by it into the custody of a clearing agency.

- (2) The Council may prescribe that a corporation incorporated by or under an Act of Parliament may deliver or transfer any securities held by it into the custody of a clearing agency.
- (3) The Council may make an order approving any aspect of the operating system of a clearing agency that is not inconsistent with this Part.

PART IX DEALINGS BY PERSONS CONNECTED WITH ISSUERS

113. (1) Any reference in this Act to "price sensitive information" in relation to any securities of an issuer is a reference to specific unpublished information which, if generally known, might reasonably be expected to affect materially the price or value of the securities.
- (2) For the purpose of this Act, a person is connected with an issuer only if -
 - (a) he is a director of that issuer or a related issuer; or
 - (b) he occupies a position as an officer (other than a director) or employee of that issuer or a related company or a position involving a professional or business relationship between himself (or his employer or a company of which he is a director) and that issuer or a related company which, in either case, may reasonably be expected to give him access to information which, in relation to securities of that issuer or a related company, is price sensitive information.
- (3) In this section, "related company" in relation to a company, means a body corporate which is the subsidiary or holding company of that company or the subsidiary of that company's holding company.
- (4) In this Part, "take-over bid" means an offer made by an offeror to shareholders of an offeree company to acquire a sufficient number of shares of any class of issued shares of the offeree company to obtain or consolidate control of that company, and includes every offer by an issuer to repurchase its own shares.
114. (1) Subject to section 119, a person who is or at any time in the previous six months has been knowingly connected with an issuer shall not buy, sell or participate in any transaction on any securities exchange or other self-regulatory organization

Meaning of
price sensitive
information.

Prohibition of
buying or selling
of securities by
certain persons.

relating to securities of that issuer if he has information which

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

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

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

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

- (a) is connected with a particular issuer, or was at any time in the six months preceding the obtaining of the information so connected; and
- (b) the first mentioned person knows or has cause to believe that, because of the latter's connection and position, it would be reasonable to expect him not to disclose the information except for the proper performance of the functions attaching to that position.

(4) Subject to section 119, the recipient -

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

- (5) Subject to section 119, where a person is contemplating, or has contemplated, making (whether with or without another person) a take-over bid for an issuer in a particular capacity, that person shall not buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization in another capacity if he knows that information that the offer is contemplated, or is not longer contemplated, is price sensitive information in relation to those securities.
 - (6) Subject to section 119, where a person who knowingly obtained, directly or indirectly, from a person to whom subsection (5) applies, information that the offer referred to in that subsection is being contemplated or is no longer contemplated, the first mentioned person shall not himself buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization in securities of that issuer if he knows that the information is price sensitive information in relation to those securities.
 - (7) Subject to section 119, a person who is for the time being prohibited by this section from buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organization in any securities shall not counsel or procure any other person to buy, sell or participate in any transaction in those securities, knowing or having reasonable cause to believe that the other person would buy, sell or participate in a transaction in them on any securities exchange or any other self-regulatory organization.
 - (8) Subject to section 119, a person who is for the time being prohibited pursuant to this section from buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organization in any securities by reason of his having any information, shall not communicate that information to any other person if he knows or has reasonable cause to believe that that person or some other person will make use of the information for the purpose of buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organization in those securities.
115. (1) An issuer may by notice in writing require any registered owner of capital stock of the issuer within such reasonable time as is specified in the notice—
- (a) to indicate in writing the capacity in which he holds any shares of issued and outstanding capital stock of the issuer; and
 - (b) if he holds them otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in them (either by name

Disclosure of beneficial interest in share capital.

and address or by other particulars sufficient to enable that person to be identified) and the nature of that person's interest.

- (2) Where an issuer is informed pursuant to a notice given to any person under subsection (1) that any other person has an interest in any shares of issued and outstanding capital stock of the issuer, the issuer may by notice in writing require that other person within such reasonable time as specified in the notice -
 - (a) to indicate in writing the capacity in which he holds that interest; and
 - (b) if he holds it otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in it (either by name and address or by other particulars sufficient to enable him to be identified) and the nature of that person's interest.
- (3) Any issuer may by notice in writing require any registered owner of capital stock of the issuer to indicate in writing, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any shares of issued and outstanding capital stock of the issuer held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give so far as it lies within his knowledge written particulars of the agreement or arrangement and the parties to it.
- (4) Where an issuer is informed pursuant to a notice given to any person under subsection (3) or this subsection that any other person is a party to such agreement or arrangement as is mentioned in subsection (3), the issuer may by notice in writing require that other person within such reasonable time as is specified in the notice to give, so far as it lies within his knowledge, written particulars of the agreement or arrangement and the parties to it.
- (5) Whenever an issuer receives information from a person pursuant to a requirement imposed on him under this section it shall inscribe in the prescribed record -
 - (a) the fact that the requirement was imposed and the date on which it was imposed; and
 - (b) the information received in pursuance of the requirement.
- (6) For the purpose of this section, the expression "registered owner of capital stock" means a person who is or is presumed to be shown on the securities register of an issuer as the owner of a security certificate issued by it evidencing capital stock.

116. (1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a reporting issuer, is directly or indirectly the beneficial owner of more than such percentage of the outstanding shares of such equity security as the Council shall prescribe, shall, within ten days after such acquisition, send to the issuer of such security at its principal executive office, and to each self-regulatory organization on which such security is listed or regularly traded, and file with the Council, a statement containing such of the following information, and such additional information, as the Council may prescribe as necessary or appropriate in the public interest or for the protection of investors -

Public disclosure
of beneficial
ownership in
certain cases,

- (a) the background, identity, residence and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases have been or will be effected;
- (b) the source and amount of funds or other consideration used or to be used in making the purchase, and if any part of the purchase price or proposed purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading such security, a description of the transaction and the name of the parties thereto;
- (c) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other person, or to make any other major change in its business or corporate structure;
- (d) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by -
 - (i) such person, and
 - (ii) each associate of such person, giving the background, identity, residence and citizenship of each such associate; and
- (e) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements or understandings have been entered into, and giving the details thereof.

(2) If any material change occurs in the facts set forth in the statements required by subsection (1), an amendment shall be

promptly sent to the issuer and the self regulatory organization and shall be promptly filed with the Council, in accordance with such regulations as the Council may prescribe.

- (3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for purposes of this section.
- (4) In determining, for purposes of this section, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer of a subsidiary of the issuer.
- (5) The provisions of this section shall not apply to -
 - (a) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed two per cent of that class;
 - (b) any acquisition of an equity security by the issuer of such security;
 - (c) any acquisition or proposed acquisition of a security that the Council, by regulation or order, shall exempt from the provisions of this section as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this section.

Take-over bids.

117. (1) No person shall, directly or indirectly, make a take-over bid for, or a request or invitation for tenders of, any equity security of a reporting issuer if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than such percentage of the outstanding shares of such equity security as the Council shall prescribe, unless, at the time copies of the offer, request or invitation are first published or first sent or given to security holders, such person has filed with the Council a statement containing such of the information specified in section 116, and such additional information, as the Council may prescribe.
- (2) All requests or invitations for tenders or advertisements making a take-over bid or requesting or inviting tenders of such a security, and all additional material soliciting or requesting such tenders subsequent to the initial solicitation or request, shall contain such information as the Council may prescribe, and shall be filed with the Council as a part of the statement required by subsection (1) and sent to the issuer, in

each case not later than the date such material is first published or first sent or given to any security holder.

- (3) Securities deposited pursuant to a take-over bid or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days, or such other period as the Council may prescribe, after the time definitive copies of the offer or request or invitation are first published or first sent or given to security holders, and at any time after sixty days, or such other period as the Council may prescribe, from the date of the original take-over bid or request or invitation for tenders.
- (4) Where any person makes a take-over bid, or request or invitation for tenders, for less than all the outstanding securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days, or such other period as the Council may prescribe, after copies of the offer or request or invitation are first published or first sent or given to security holders than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be *pro rata*, according to the number of securities deposited by each depositor.
- (5) The provisions of subsection (4) shall apply to securities deposited within ten days, or such other period as the Council may prescribe, after notice of an increase in the consideration offered to security holders, as described in subsection (6), is first published or first sent or given to security holders.
- (6) Where any person varies the terms of a take-over bid or request or invitation for tenders before the expiration date thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the take-over bid or request or solicitation for tenders whether or not such securities have been taken up by such person before the variation of the take-over bid or request or invitation.
- (7) The provisions of section 74 and sections 116(3), (4) and (5) shall apply to takeover bids.

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

- (a) on summary conviction to a fine of twenty thousand dollars and to imprisonment for three months;

Offences

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

Exceptions to
section 114.

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

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

(2) A person is not, by reason only of his having information relating to any particular transaction prohibited -

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

Defense not
available.

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

Application
to trustees
and personal
representatives.

121. (1) Where a person referred to in subsection (2) buys, sells or participates in any transaction in any securities or counsels or procures any other person to buy, sell or participate in any

transaction on any securities exchange or any other self regulatory organization, he is presumed to have acted with propriety if he acted on the advice of a person who -

- (a) appeared to him to be an appropriate person from whom to seek such advice; and
- (b) did not appear to him to be prohibited by section 114 from buying, selling or participating in any transaction on any securities exchange or any self regulatory organization in those securities.

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

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

- 122. (1) A person who contravenes section 114 is liable -
 - (a) on conviction on indictment to a fine of one million dollars and to imprisonment for two years; and
 - (b) on summary conviction to a fine of five hundred thousand dollars and to imprisonment for six months.
- (2) No transaction is void or voidable solely by reason that it was entered into in contravention of section 114.

Penalties.

PART X CIVIL LIABILITY

- 123. (1) Subject to this section, each of the following designated persons is, for any loss or damage sustained by other persons who, on the faith of a prospectus, subscribe for, or purchase any securities, liable for any loss or damage sustained by those other persons by reason of any untrue statement in the prospectus, or by reason of the wilful non-disclosure in the prospectus of any matter of which the designated person had knowledge and that he knew to be material, namely -
 - (a) a person who is a director of an issuer at the time of the issue of the prospectus;
 - (b) a person who authorized or caused himself to be named, and is named, in the prospectus as a director or as

Persons liable for
damage, etc., in
prospectus.

- having agreed to become a director, either immediately or after an interval of time; or
- (c) a person who authorized or caused the issue of the prospectus.
- (2) Notwithstanding subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he is not, by reason only of the consent, liable as a person who has authorized or cause the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert; and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, attorney-at-law, transfer agent or stockbroker may not, for that reason alone, be taken as an authorization by him of the issue of the prospectus.
- (3) No person is liable under subsection (1) -
- (a) who, having consented to become a director of the issuer, withdrew his consent before the issue of the prospectus and the prospectus was issued without his authority or consent;
- (b) who, when the prospectus was issued without his knowledge or consent, gave reasonable public notice of that fact forthwith after he became aware of its issue;
- (c) who, after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his consent, and gave reasonable public notice of the withdrawal of his consent; or
- (d) who, as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable ground to believe and did, up to the time of the allotment or sale of the securities, believe that the statement was true.
- (4) No person is liable under subsection (1) -
- (a) if, as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert, the untrue statement fairly represented was a correct and fair copy of, or extract from, the report or valuation and that person had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe, that the expert making the statement was competent to make it, and had given his consent as required under section 66 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, nor had the expert, to the person's knowledge, withdrawn that consent before allotment or sale under the prospectus; or

- (b) if, as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, the untrue statement was a correct and fair representation of the statement or a copy of, or extract from, the document.
- (5) Subsections (3) and (4) do not apply in the case of a person liable, by reason of his having given a consent required of him by section 66, as a person who has authorized or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.
- (6) A person who, apart from this subsection, would be liable under subsection (1), by reason of his having given a consent required of him by section 66, as a person who has authorized or caused the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, is not liable -
 - (a) if, having given his consent under that section to the issue of the prospectus, he withdrew his consent in writing before a copy of the prospectus was filed with the Council;
 - (b) if, after a copy of the prospectus was filed with the Council and before allotment or sale under the prospectus, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal; or
 - (c) if he was competent to make the statement and had reasonable grounds to believe, and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.
- (7) When -
 - (a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorized or consented to its issue; or
 - (b) the consent of a person is required under section 66 to the issue of a prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus,
 any person who authorized or caused the issue of the prospectus and the directors of the issuer, other than those directors without whose knowledge or consent the prospectus was issued, are liable to indemnify the person so named, or whose consent was so required, against all damages, costs and expenses to which he might be liable by reason of his name having been inserted in the prospectus, or of the inclusion of a

statement purporting to be made by him as an expert, or in defending himself against any action or legal proceedings brought against him in respect thereof.

- (8) The liability of all persons referred to in subsection (1) is joint and several as between themselves with respect to the same cause of action.
- (9) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the Court is satisfied that it would not be just and equitable.

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

124. (1) A security holder may bring against an issuer that has allotted securities under a prospectus, an action for the rescission of the allotment and the repayment to him of the whole or part of the issue price that has been paid in respect of the security, if -
- (a) the prospectus contained a material statement, promise or forecast that was intentionally false, deceptive or misleading; or
 - (b) the prospectus did not contain a statement, report or account required under this Act or the regulations to be contained in it, and such omission was material.
- (2) In this section "security holder" means a holder of any of the securities allotted under the prospectus, whether the original allottee or a person deriving title under him.
- (3) For the purposes of this section -
- (a) a prospectus contains a material statement, promise or forecast if the statement, promise or forecast was made in such a manner or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the securities offered for subscription; and
 - (b) a statement, report or account is omitted from a prospectus if it is omitted entirely, or if it does not contain all the information required by this Act or the regulations to be given in the statement, report or account.
- (4) In an action brought under this section, the plaintiff need not prove that he, or the person to whom the securities he holds were allotted, was in fact influenced by the statement, promise or forecast that he alleges to be intentionally false, deceptive or misleading, or by the omission of any report, statement or account required to be contained in the prospectus.

- (5) No action may be brought under this section more than two years after the first issue of the prospectus under which securities were allotted to the plaintiff or the person under whom the plaintiff derives title.
- (6) Subject to subsection (9), it is a defense to an action under this section for the issuer to prove that -
 - (a) the plaintiff was the allottee of the securities in right of which the action was brought and that at the time they were allotted to him he knew that the statement, promise or forecast of which his complains was intentionally false, deceptive or misleading, or that he knew of the omission from the prospectus of the matter of which he complains; or
 - (b) the plaintiff has received a dividend or payment of interest, or has voted at a meeting of shareholders or debenture holders since he discovered that the statement, promise or forecast of which he complains was intentionally false, deceptive or misleading, or since he discovered the omission from the prospectus of the matter of which he complains.
- (7) An action may not be dismissed if there are several plaintiffs, when the issuer proves that it has a defense under subsection (6) against each of them; and in any case in which the issuer proves that it has a defense against the plaintiff or all the plaintiffs, the Court may, instead of dismissing the action, substitute some other security holder of the same class as plaintiff.
- (8) Where an issuer would have a defense under subsection (6) but for the fact that the allottee of the securities in right of which the action is brought has transferred or renounced them, the issuer may bring an action against the allottee for an indemnity against any sum that the Court orders it to pay to the plaintiff in the action.
- (9) This section applies to securities allotted pursuant to an underwriting contract as if they had been allotted under the prospectus.
- (10) This section applies to securities issued under a prospectus that offers them for subscription in consideration of the transfer or surrender of other securities, whether with or without the payment of cash by or to the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by the Court, of the securities to be transferred or surrendered, plus the amount of cash, if any, to be paid by the issuer.

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

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

125. (1) The Council may apply to a Judge of the Court for leave to bring an action under this Part in the name and on behalf of an issuer and the Judge may grant leave on any terms as to security for costs or otherwise that he considers proper if he is satisfied that -
- (a) the Council has reasonable grounds for believing that a cause of action exists under this Part; and
 - (b) the Council gave reasonable notice to the issuer who refused or failed to commence an action.
- (2) The Council may apply to a Judge of the Court for leave to bring an action under this Part in the name and on behalf of a security holder and the Judge may grant leave on any terms as to security for cost or otherwise that he considers proper if he is satisfied that -
- (a) the Council has reasonable grounds for believing that a cause of action exists under this Part; and
 - (b) the security holder has failed or is unable to commence the action.
- (3) The Council may apply to a Judge of the Court for leave to appear or intervene in an action under this Part and the Judge may grant leave on such terms as he considers appropriate.
- (4) The Council may publish a summary of the terms of any settlement of an action commenced or intervened in by it in the Gazette, and in a periodical published by a self-regulatory organization with a material interest in the settlement or in a daily newspaper circulating in Guyana.

PART XI ENFORCEMENT

Divisions 1 - Regulations

Regulations.

126. (1) The Council may make regulations.
- (a) classifying persons, securities, trades, distributions, registrations under Part III, IV or V, filings, applications and other matters and prescribing requirements appropriate to each class;
 - (b) respecting registration under this Act, including but not limited to prescribing conditions to be met by persons registered in each category;

- (c) prescribing the method of record keeping and the type and form of records to be kept by each category of person registered under this Act;
 - (d) prescribing the format and contents of filings and applications and the filing of copies of documents filed with any government agency;
 - (e) prescribing the accounting principles and standards used in the preparation of financial statements;
 - (f) requiring examination of and reporting on financial statements by independent accountants;
 - (g) establishing standards of independence for accountants in relation to financial statements;
 - (h) prescribing the form and content of an independent accountant's report;
 - (i) prescribing fees for any filing with or other application to the Council;
 - (j) governing conflicts of interests for Members of the Council, the General Manager and other employees of the Council and other persons engaged by the Council to act as advisers or to perform duties under this Act;
 - (k) prescribing any matter or thing required by this Act to be prescribed; and
 - (l) respecting any other matter authorized by or required to carry out the purposes of this Act.
- (2) The Council may make regulations governing take-overs in respect of public companies.
- (3) Regulations under this Part shall be subject to negative resolution of the National Assembly.
- (4) Without prejudice to the generality of subsection (2), regulations made thereunder shall include -
- (a) the level of acquisition of voting rights by a person or persons acting in concert at which an offer to all shareholders of the relevant shares shall become mandatory and the conditions applying to such offers;
 - (b) the requirements of the offeror and offeree companies in respect of information to be disclosed to shareholders of both companies;
 - (c) the requirements as regards equitable treatment of shareholders of the same class or cash alternatives in offers or both;
 - (d) the timing of offer procedures and circulation of documentation;
 - (e) conditions observable in the dealing of shares by the offeror or by persons in concert during the offer period and the reporting to the Council of dealings in the shares of the offeree company during the take-over period;

- (f) the minimum period within which an unsuccessful offer may not be renewed;
- (g) the requirements to protect minority interests.

- (5) The Council may establish a committee to administer the regulations made under subsection (2) and may make rules for the conduct of the business of that committee.
- (6) Regulations may provide that a contravention thereof shall be punishable on summary conviction by a fine of two hundred and fifty thousand dollars and imprisonment for two years.
- (7) Notwithstanding subsections (1) and (2), the first regulations made under each of those subsections may be made by the Minister without the recommendation of the Council and for the purposes of this subsection, section 127 shall not apply.

Publication of
proposed
regulations.

127. (1) The Council shall publish in the *Gazette* and in a daily newspaper circulating in Guyana, on three consecutive Saturdays, the first such newspaper publication to occur at least sixty days before the proposed effective date thereof -
- (a) a copy of any regulation that it proposes to make;
 - (b) a concise statement of the substance and purpose of the proposed regulation, and the proposed effective date; and
 - (c) a reference to the authority under which the regulation is proposed.
- (2) After a proposed regulation is published in accordance with subsection (1), the Council shall afford a reasonable opportunity to interested persons to make representations in writing, to be submitted to the Council within fourteen days of the third publication of the notice referred to in subsection (2), with respect to the proposed regulation.
- (3) The Council, where it considers it necessary, may convene a hearing for the presentation of oral argument or the submission of evidence orally and may permit cross-examination by interested persons in order to determine an issue of specific fact that is material to its consideration of a proposed regulation.
- (4) The Council is not required to comply with subsections (1) and (2) if -
- (a) all persons who will be subject to the regulation are named and the information that would be subject to publication is sent to each of them;
 - (b) the regulation only grants an exemption or relieves a restriction and is not likely to have a substantial impact

- on the interests of persons other than those who benefit under it;
- (c) the regulation makes no material substantive change in an existing regulations; or
 - (d) the Council for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it.
- (5) Any person may petition the Council to recommend the making, the amendment or revocation of a regulation.

Division 2 - Orders of Council

128. (1) The Council may make an order on its own motion or on application by an interested person -
- (a) classifying a person, security, trade, distribution, registration under Part III, IV or V, filing, application or other matter and imposing requirements appropriate to the class;
 - (b) permitting or requiring in a filing or application the filing of copies of documents filed with another government agency; and
 - (c) respecting any other matter authorized by or required to carry out the purposes of this Act.
- (2) A declaratory order or an order granting an exemption is effective against all persons, but the Council shall make an order revoking or modifying such an order when it finds that a determination reflected in it is no longer consistent with the facts.
129. (1) The Council shall, before making a final order, provide a reasonable opportunity for a hearing to each person directly affected and shall give not less than fourteen days' notice to each person and to any interested self-regulatory organization including -
- (a) a statement of the time, place and purpose of the hearing;
 - (b) a reference to the authority under which the hearing is to be held;
 - (c) a concise statement of the allegations of fact and law; and
 - (d) a statement that if the person fails to attend at the hearing, the Council may proceed without giving him further notice.
- (2) The Council may -
- (a) issue a subpoena or other request or summons requiring a person to attend at a hearing, to testify to all matters

Power to
make orders.

Conduct of
hearings.

- relating to the subject of the hearing and to produce all records relating to the subject of the hearing that are in his possession or under his control, whether they are located in or outside Guyana; and
- (b) compel a person to give evidence on oath, affirmation or otherwise as it thinks necessary, orally or in writing.
- (3) Notwithstanding subsection (2), no person giving evidence before the Council shall be compelled to incriminate himself, and every such person shall, in respect of any evidence given by him before the Council, be entitled to all privileges to which a witness giving evidence before the Court is entitled in respect of evidence given by him before such Court.
- (4) A hearing under subsection (1) shall be open to the public unless the Council directs otherwise in order to protect the interests of the persons affected, but if all persons directly affected and appearing so request, a hearing shall be open to the public.
- (5) A person who is entitled to notice of a hearing under subsection (1) may be represented by counsel and, subject to the rules made by the Council for the conduct of its business, may present evidence and argument and may cross-examine witnesses at the hearing.
- (6) A witness at a hearing under subsection (1) may be advised by counsel.
- (7) The Council may admit as evidence at a hearing any oral testimony or documentary exhibit that it considers relevant to the subject matter of the proceedings and may take notice of any fact that may be judicially noticed and of any generally recognized scientific or technical fact, information or opinion within its area of expertise.
- (8) The Council shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.
- (9) The Council shall -
- (a) make a final order in writing and state the findings of fact on which it is based and the reasons for it;
 - (b) send a copy of the order and reasons to each person entitled to notice under subsection (1) and to each person who appeared at the hearing; and
 - (c) publish a copy of the order and reasons or a summary thereof in the *Gazette*, and in a periodical published by a self-regulatory organization with a material interest in the order or in a daily newspaper circulating in Guyana,

but the Council may omit the name of an affected person from an order so published.

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

Division 3 - Appeals

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

Appeals for review
re section 7 or 38.

- (2) The Council may of its own motion review an order made pursuant to authority delegated by the Council under section 7 or made by a self-regulatory organization under section 38 and shall provide a reasonable opportunity for a hearing and give not less than fourteen days' notice to each person, including a self-regulatory organization, directly affected by the order.
- (3) On an appeal or review under this section the Council may, subject to section 39, confirm the order or make such orders as it considers appropriate.
- (4) An order that is subject to appeal or review under this section takes effect immediately, but the Council or the person who made the order may grant a stay pending the decision of the Council.

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

Appeal to court
against final order.

- (2) No appeal may be made under this section unless the person affected has taken all reasonable steps available to appeal or obtain review of the order pursuant to section 130.
- (3) An order that is subject to appeal under this section takes effect immediately, but the Council or the Court may grant a stay pending the hearing of the appeal.
- (4) The Council is entitled to appear and be heard on the merits on an appeal under this section or on any other application to the Court relating to the exercise by the Council of its powers.

- (5) On an appeal under this section, the Court may make or may direct the Council to make any order that the Council is authorized to make and which the Court considers proper, or it may remand the case to the Council for further proceedings subject to any conditions which that Court thinks fit.
- (6) On an appeal under this section against a cease trading order under section 136 or an order under section 137, the Court may confirm the order or may, if the order is arbitrary, capricious or an abuse of discretion, revoke it.

Appeal to court
against regulation.

132. (1) A person affected by a regulation of the Council may appeal to the Court against the application of that regulation to him.
- (2) A regulation that is subject to appeal under this section takes effect at the time specified by the Council, but the Council or the Court may grant a stay pending review.
 - (3) The Council is entitled to appear and be heard on the merits of an appeal under this section.
 - (4) On an appeal under this section, the Court may confirm or revoke a regulation or may remand the matter to the Council for further proceedings subject to any conditions that Court considers proper, but the Court may revoke a regulation only if -
 - (a) it is arbitrary, capricious or an abuse of discretion;
 - (b) it is in excess of the Council's jurisdiction;
 - (c) it was made in contravention of section 127; or
 - (d) a specific material fact found by the Council after an evidentiary hearing convened pursuant to section 127(3) is not supported by the evidence.
 - (5) For the purposes of this section, an order of the Council under section 40 or 41 is a regulation.

Division 4 - Investigations

Investigation of
contraventions.

133. (1) The Council may appoint a person to conduct an investigation to ascertain whether any person has contravened, is contravening or is about to contravene this Act.
- (2) A person appointed by the Council pursuant to subsection (1) may issue a subpoena or other request or summons requiring a person to attend at a specified time and place, to testify to all matters relating to the subject of an investigation and to produce all records relating to the subject of the investigation that are in his possession or under his control.

- (3) A person appointed by the Council pursuant to subsection (1) may compel a person to give evidence on oath, affirmation or otherwise as he thinks necessary, orally or in writing, and may administer an oath or affirmation at any place.
 - (4) Where a person who is required by the Council to give evidence or attend a hearing in the course of an investigation fails or refuses to -
 - (a) attend; or
 - (b) give evidence on oath, or with affirmation,
 the Council may make an application to the Court to so compel the person.
 - (5) An investigation under this section shall be held *in camera*.
 - (6) A person appointed by the Council pursuant to subsection (1) shall provide the Council with a full and complete report of the investigation including any transcript of evidence and any material in his possession relating to the investigation.
 - (7) The Council may publish a report or other information concerning an investigation under this section, but if it intends to do so it shall -
 - (a) provide a person against whom an adverse finding is to be made with fourteen days' notice of the finding and an opportunity to be heard in person or by counsel; and
 - (b) if practicable, provide a person who is likely to receive adverse publicity with advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.
134. (1) The Council may conduct an inquiry to aid in the preparation of regulations under this Act or to obtain information as a basis for recommending legislation relating to the Act or its subject matter.
- Conduct of inquiry
re proposed
regulations.
- (2) The Council may exercise the powers specified in section 133(2) and (3) in relation to an inquiry under this section.
 - (3) A person who gives evidence in an inquiry under this section may be represented by counsel.
 - (4) An inquiry under this section may be conducted in public, but a person who is likely to receive adverse publicity as a result of the inquiry being public shall be afforded, if practicable, a reasonable opportunity to state his position for the record in the inquiry.
 - (5) The Council may publish a report or other information concerning an inquiry under this section, but a person who is

likely to receive adverse publicity as a result of such publication shall be afforded, if practicable, advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

Investigation of
financial affairs
of registrant

135. (1) The Council may at any time, where it is of the view that a registrant may be in breach of this Act, appoint a person in writing to examine the records and financial affairs of a registrant and to prepare such financial or other reports as the Council requires.
- (2) Where, upon the application *ex parte* of the Council, the Court is satisfied that a person other than a registrant may be in breach of this Act, the Court may make an order authorizing the Council to examine the records and financial affairs of that person.
- (3) A person appointed by the Council pursuant to subsection (1) or (2) may examine all the records, books of account, securities, cash, bank accounts and other data of the registrant or person whose affairs are to be examined.
- (4) No person shall withhold, conceal, destroy or refuse to produce any information reasonably required for the purpose of the examination by a person appointed pursuant to subsection (1) or (2).
- (5) The Council may charge a registrant a prescribed fee for an examination made under this section.

Power to order
cessation of
trading.

136. (1) Where the Council considers that -
- (a) a security is being traded in connection with a distribution contrary to this Act;
 - (b) a prospectus, block distribution circular or any other document used in connection with a distribution contains a misrepresentation or omits a material fact required to be included;
 - (c) any of the circumstances specified in section 68(2) as the basis for a refusal to issue a receipt for a prospectus exists; or
 - (d) an issuer, selling security holder or underwriter has failed to provide information, including financial statements relating to the issuer or the distribution, that is reasonably requested by the Council,
- the Council may order that all trading in connection with the distribution cease.
- (2) Where the Council considers that -
- (a) a material fact relating to an issuer of a security has not been disclosed and become public;

- (b) trading in a security or fluctuations in the price of a security require explanation; or
 - (c) it is otherwise in the public interest or necessary for the protection of investors,

the Council may order, subject to such conditions as it considers appropriate, that trading cease in respect of any security for a period specified by it.
 - (3) Where the Council considers that it is in the public interest or necessary for the protection of investors, it may make an order prohibiting, subject to such conditions as it considers appropriate, a person who contravenes this Act from trading in securities or from trading a specified security for a period specified by it.
 - (4) The Council may make an order under subsection (1) or (3) without holding a hearing as required by section 129, but it shall provide an opportunity for such a hearing within seven days of the making of the order and the order remains in effect until the hearing is completed.
 - (5) The Council may make an order under subsection (2) without holding a hearing as required by section 129, but it shall provide an opportunity for such a hearing within seven days of the making of the order and the order remains in effect until the hearing is completed, unless the order was made pursuant to subsection (2)(a), in which case the Council may extend it until the material fact is disclosed and becomes public.
 - (6) The Council shall forthwith give notice of an order under this section to -
 - (a) each person named in the order;
 - (b) the issuer of a security specified in the order;
 - (c) any other person the Council believes is directly affected by the order; and
 - (d) if the order is made pursuant to subsection (1) or (2), every person registered under Parts IV and V,

and shall include notice of the order in the Gazette, and in a periodical published by a self-regulatory organization with a material interest in the order or in a daily newspaper circulating in Guyana.
 - (7) No person shall trade in contravention of an order under this section.
137. (1) Where the Council, after a hearing, considers it to be in the public interest, it may order -
- (a) that a person comply with or cease contravening, and that the directors and senior officers of the person cause the person to comply with or cease contravening -
 - (i) this Act or the regulations;

Power to order
additional relief.

- (ii) an order of the Council;
 - (iii) a rule, direction, decision or order made under a rule of a self-regulatory organization;
 - (b) that a person resign any position that the person holds as a director or officer of a registrant or issuer;
 - (c) that a registrant or issuer -
 - (i) is prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information or record of any kind described in the order;
 - (ii) is required to disseminate to the public, by the method described in the order, any information or record relating to the affairs of the registrant or issuer that the Council considers must be disseminated;
 - (iii) is required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public; or
 - (d) that a registrant or issuer be reprimanded or that person's registration be suspended, canceled or restricted.
- (2) The Council shall send written notice of every order made under this section to any person that is directly affected by the order.
- Order for penalty. 138. (1) Where the Council after a hearing determines that a person has contravened this Act or any regulation or an order of the Council and considers it to be in the public interest to make the order, the Council may order the person to pay to the State a penalty of not more than one hundred and fifty thousand dollars.
- (2) Where the Council makes an order under subsection (1), the Council shall file in the registry of the Court a copy of the order certified by the Chairman of the Council, and on being filed the order shall have the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Court, unless an appeal has been filed pursuant to section 131
- (3) Every penalty imposed by the Council in the exercise of its powers under this Act shall be payable into the general revenue and may be recovered by the State as a civil debt, and for the purposes of the proof of such debt a certificate under the hand of the Chairman of the Council shall be receivable in evidence as sufficient proof of such debt.

Division 5 - Orders of Court

139. (1) Where the Council considers that a person has failed to comply with or is contravening this Act or any regulation or an order, the Council may, in addition to any other powers it may have, apply to the Court for a permanent or temporary injunction directing -
- Court orders
for enforcing
compliance.
- (a) the person to comply with or to cease contravening this Act, the regulation or the order; and
 - (b) the directors and senior officers of the person to cause the person to comply with or to cease contravening this Act, the regulation or the order.
- (2) On application under subsection (1), the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing -
- (a) an order requiring restitution or disgorgement of profits;
 - (b) an order restraining the conduct complained of;
 - (c) an order requiring compliance with this Act or the regulations or an order;
 - (d) an order requiring disclosure of any information;
 - (e) an order setting aside a transaction relating to trading in securities; or
 - (f) an order requiring the issuance or cancellation of a security or the purchase, disposition or exchange of a security.
- (3) An order may be made under this section notwithstanding that a penalty has already been imposed on that person in respect of the same non-compliance or contravention.
140. (1) Where the Council considers that it is necessary in the public interest or for the protection of investors to prevent -
- Appointment of
receiver, etc.
- (a) a person who has contravened this Act or any regulation; or
 - (b) a person whose registration under this Act has been suspended or revoked, from dealing with property under his control or direction, it may apply to the Court, and the Court may appoint a receiver or receiver-manager of the property if it is satisfied that it is in the interest of investors or persons whose property is controlled by, or creditors, security holders or members of, that person to do so.
- (2) Where the Council intends to apply to the Court to appoint a receiver or receiver-manager in respect of the property of a financial institution, the Council shall, before making the application, consult with the Bank of Guyana with regard to the proposed application.

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

No. 29 of 1991.

- (4) The provisions of Part 111, Division C of the Companies Act 1991 shall apply to a receiver or receiver-manager appointed under this section.

Disqualification
of directors.

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

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

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

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

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

Division 6 - Offences

Offences

142. (1) A person who -
 (a) knowingly or recklessly makes a misrepresentation in contravention of this Act or any regulation;

- (b) knowingly or recklessly makes a misrepresentation to any person appointed to conduct an investigation under section 133 or to the Council in connection with an inquiry under section 134; or
- (c) knowingly or recklessly contravenes section 31, 46, 47, 56, 57 or 61,

is guilty of an indictable offence and is liable to a fine of three hundred thousand dollars and to imprisonment for two years.

- (2) A person who knowingly or recklessly contravenes a provision of this Act or any regulation that is not specified in subsection (1) or an order of the Council, is guilty of an offence and is liable on summary conviction to a fine of one hundred fifty thousand dollars and to imprisonment for one year.
- (3) A person who fails without reasonable excuse to comply with an order of the Council or a subpoena or other request or summons under section 133(2) or (3), 134(2) or 135(4) or to permit entry under section 42(3) or 136(4) is guilty of an offence and is liable on summary conviction to a fine of seventy-five thousand dollars and to imprisonment for three months.
- (4) Reasonable reliance, including reliance on advice of counsel, in good faith upon a statement of the law contained in -
 - (a) this Act or any regulation;
 - (b) a judicial judgment or opinion; or
 - (c) an order or official release of the Council,
 is a defense in a proceeding under this section.

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

Liability of
directors, etc.

- (2) Wherever in this Act it is provided that any act or omission of any person is unlawful or is an offence and no penalty or sanction is specified in respect of that offence, that act or omission shall be punishable on summary conviction by a fine not exceeding two hundred thousand dollars and three months' imprisonment, and when the person accused in respect of such act or omission is an issuer, the issuer shall be liable to such fine.
- (3) A person convicted of an offence against this Act or any regulation is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.

- (4) The Council may prepare a certificate setting out the costs of the investigation of an offence, including the time spent by its staff and any fees paid to an expert, investigator or witness.
- (5) The Council may apply to a master or registrar of the Court to review the certificate under the rules of the Court as if the certificate were a bill of costs, and the master or registrar shall review the cost and may vary them if he considers them unreasonable or not related to the investigation.
- (7) After review, the certificate may be filed in the Court and may be enforced against the person convicted as if it were an order of the Court.

Prosecution of
summary offences.

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

PART XII TRANSITIONAL PROVISIONS

Repeal
No. 29 of 1991.

145. (1) Part III, Division D of the Companies Act 1991, but not the First Schedule thereunder, is hereby repealed.

No. 12 of 1995

(2) The Capital Issues (Control) Act 1995 is hereby repealed.

Overriding effect
of this Act.
No. 1 of 1995.

146. The Financial Institutions Act 1995 shall, to the extent to which any provision thereof is inconsistent with any provision of this Act, be construed as amended and modified by this Act.

Passed by the National Assembly on 28th December, 1998.

F. A. Narain
Clerk of the National Assembly.

(BILL No. 24/1998)