

COMMODITY EXCHANGE REGULATIONS, 2014

MEMORANDUM

The object of these Regulations is to provide a legal and regulatory framework for the effective regulation of Commodity Exchanges in Ghana. Currently, there is no such legal framework to regulate activities of Commodity Exchanges in Ghana.

Specifically, the Regulations will provide the legal framework required for the regulation of procedures for establishment and operations of commodity exchanges, their duties and functions, minimum requirements for their rules, the licensing of exchange Actors and other related matters.

The enactment of the Regulations is directly linked to the Government of Ghana's policy to modernize the marketing of Agricultural product in the country. The enactment of the Regulations will create an orderly, transparent, and efficient marketing system for Ghana's key agricultural commodities to promote agricultural investment and enhance productivity.

The Regulations will also encourage market access and fair returns for smallholder farmers, and facilitate the formalization of informal agricultural trading activities.

The Regulations is divided into eight parts. **Part I** of the Regulations, *clause 1 to 3* deals with preliminary issues. *Clause 1* states what the short title of the Regulations will be. *Clause 2* spells out the functions and powers of the Commission. The powers of the Commission under the Regulations includes the power to to require such reports as it may determine are necessary in the administration of this Regulations, to determine the rate of, and levy the fees and other charges for carrying out the provisions of this Regulations, to specify the qualifications, code of conduct and practical training for Exchange Actors and (within the limitations of this Regulations) other personnel engaged in commodities exchange business, to license Exchange Actors and other personnel engaged in commodities exchange business, to prescribe all forms, including the forms and applications for licenses and to regulate the registration and functioning of institutions providing services on commodities exchanges among other things. The Commission is empowered in *Clause 3* to delegate the performance of any of its functions or the exercise of any of its powers.

Part II of the Regulations deals with Commodities Exchanges. The Part is divided into four sections namely license, duties and functions, operations of a commodity exchange and dispute resolution. The first section is provided for in clauses 5 to 7. *Clause 4* provides for the legality of the establishment of commodities exchanges under the Regulations. *Clause 5* deals with licensing application procedures and requirement referencing Part IV of the Securities Industry Regulations licensing provisions. *Clause 6* deals with issues relating to grant or refusal of commodity exchange licenses.

Duties and functions of a commodity exchange have been provided for in Clauses 8 to 13. *Clause 7* provides for the general duties and functions of a commodity exchange. *Clause 8* mandates a commodity exchange to assist the Commission with such information as the Commission may reasonably require for the performance of its functions. *Clause 9* mandates a commodity exchange to provide the Commission within a

certain timeframe with written particulars of any disciplinary action taken against a member of the exchange. *Clause 10* mandates a commodity exchange to make rules and regulations with the prior approval of the Commission for the proper and efficient regulation, operation, management and control of the commodities exchange. *Clause 11* deals with processes to be followed by a commodity exchange to amend its rules and regulations. The Commission is empowered in *Clause 12* to require amendment to rules of a commodity exchange it considers it necessary for the protection of the public.

The operations of a commodity exchange have been provided for in Clauses 14 to 23. *Clause 13* mandates a commodity exchange to keep and maintain a register of all its members as well as processes for managing complaints made against members. *Clause 14* provides for trading and trading systems permitted under the law. Requirement of how market information must be disseminated is provided for in *Clause 15*. *Clause 16* provides for the type of contracts that can be traded on a commodity exchange. *Clause 17* mandates a commodity exchange in conjunction with the Ghana Standards Authority to develop and maintain grades and standards for the purposes of trading commodities on an exchange.

Clause 18 deals with issues relating to warehousing and receipts. Clearing and settlement is provided for in *Clause 19*. Under this clause, a commodity exchange is mandated to have a clearing and settlement function. *Clause 20* requires a commodity exchange to have market surveillance tools to effectively monitor operations on the exchange. Risk management function of a commodity exchange is provided for in *Clause 21*. Maintenance of security of personnel and data of a commodity exchange is provided for in *Clause 22*.

The Dispute Resolution mechanism of an exchange is provided for in *Clause 23*. The commodity exchange is mandated under this clause to establish rules and procedures for the thorough investigation and expeditious resolution of complaints or disputes.

Part III of the Regulations deals with Self Regulatory Organisations. *Clause 24* provides for the qualifications for recognition and responsibilities of self regulatory organizations. *Clause 25* requires a recognized self regulatory organization under the Regulations to within 90 days of the date of its balance sheet submit to the Commission an annual report. *Clause 26* mandates a commodities exchange to keep records and make the records available by the Commission at any time. *Clause 27* provides for sanctions against self regulatory organizations.

Part IV of the Regulations deals with Licensing of Exchange Actors. *Clause 28* provides for the requirement of a license prior to a person operating as an exchange Actor. *Clause 29* spells out the criteria for the grant of an exchange Actor's license. Per *Clause 29*, there are 3 main categories of exchange Actors namely Commodities Exchange Dealer, Commodities Exchange Broker and Commodities Exchange Broker / Dealer. *Clause 30* makes it an offence to give false statements in support of a license application. *Clause 31* provides for the requirements to be satisfied for a license as an exchange Actor to be issued. Appeal against refusal to grant or renew license is provided for in *Clause 32*. *Clause 33* permits a licensed exchange Actor, who has before the expiration of his / her license to operate without liability for operating without a license if his / her license is pending renewal and has not been issued. *Clause 34* mandates an exchange Actor to periodically furnish the Commission with such report and information as may be required by the Commission. *Clause 35* gives the Commission the power to suspend or revoke the license of an exchange Actor under certain conditions. *Clause 36* provides for the effect of a revocation or suspension of a license.

Part V of the Regulations deals with unlawful commodities exchange transactions. The Part provides for instances where certain activities will constitute an offence under the Regulations. *Clause 37* deals with issues of insider dealings. *Clause 38* defines who may be considered as an insider. *Clause 39* provides for what may be considered as inside information. *Clause 40* defines what is meant by information 'made public' under the Regulations. *Clause 41* deals with instances where certain activities will be considered as false trading. Price rigging is provided for in *Clause 42* whilst the offence of market manipulation is provided for under *Clause 43*. Use of deceptive statements as inducements to trade on an exchange is an offence under *Clause 44*. The offence of fraudulent transactions is provided for under *Clause 45*. The offence of false or misleading statements inducing exchange transactions is provided for in *Clause 46*. The provision of clearing and settlement and depository services without recognition from the Commission is made an offence under *Clause 47*. *Clause 48* provides for the penalties for offences under clauses 38 to 47. *Clause 49* provides for liability to pay damages if a person is convicted of an offence under sections 38, 42, 43, 44, 45, 46, 47 and 48. The damages will be paid to any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the Regulations or transaction which comprises the subject of the offence.

Part VI of the Regulations deals with the Settlement Guarantee Fund. *Clause 50* provides for the establishment of a Settlement Guarantee Fund by a commodity exchange who decides to offer clearing and settlement and depository functions itself as part of its operations. *Clause 51* spells out how monies in the Settlement Guarantee Fund are to be utilized or applied.

Part VII deals with additional powers of the Commission. *Clause 52* provides for the emergency powers of the Commission. The Clause mandates the Commission to take such actions as it considers necessary to maintain and restore orderly trading among other things in the event of certain occurrences. *Clause 53* gives the Commission the power to issue directions to a commodity exchange. *Clause 54* gives the Commission the power to call for any information it may reasonably require for the exercise of its functions. *Clause 55* gives the Commission, a commodity exchange and clearing settlement and depository organizations the right to supply each other with information about their commodities business. *Clause 56* gives the Commission the power to require or authorize another person to require such information relating to an acquisition, disposal or holding of commodities. *Clause 57* gives the Commission the power to inspect any documents relating to the business of a licensee. *Clause 58* gives the Commission the power to investigate any offence under the Regulations or any suspicion of breach of trust, fraud or misconduct. *Clause 59* provides for any party who is adversely affected by a decision of the Commission under Clause 52 to appeal to the High Court.

Part VIII deals with Miscellaneous Provisions. *Clause 60* provides for disciplinary action over members of a commodity exchange. Under this clause, whenever a commodity exchange takes disciplinary action against an exchange actor, the exchange must report to the Commission within 7 days of taking such action. *Clause 61* provides reasons by which the Commission may revoke any approval granted under Clause 7. *Clause 62* mandates the Commission to publish in a Gazette, the notice of approval for the establishment of a commodities exchange and every cancellation or suspension of any approval. *Clause 63* is the general penalty clause. The Clause provides for instances under the Regulations where an offence have been committed but for which no specific penalty has been prescribed. *Clause 64* is the interpretation section.

The passage of these Regulations will create the requisite legal framework for the establishment and operations of a Commodity Exchange in Ghana.

Signed.....

Hon. Seth Terkper,

Minister of Finance

Date

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COMMODITY EXCHANGE REGULATIONS, 2014

IN the exercise of the powers conferred on the Minister responsible for Finance by Section 214 the Securities Industry Regulations 2014 (Regulations.....) and on the recommendation of the Securities and Exchange Commission, these Regulations are made thisday of2014.

PART I - PRELIMINARY

1. Scope of application of Regulations

These Regulations apply to the operation of commodity exchanges under the Securities Industry Regulations, 2014 (Regulations.....)

2. Functions and Powers of the Commission

The Commission shall administer these Regulations and in its administration is authorized, in addition to any other powers conferred by these Regulations:-

- (a) to require such reports as it may determine are necessary in the administration of this Regulations;
- (b) to determine the rate of, and levy the fees and other charges for carrying out the provisions of this Regulations;
- (c) to specify the qualifications, code of conduct and practical training for Exchange Actors and (within the limitations of this Regulations) other personnel engaged in commodities exchange business;
- (d) to license Exchange Actors and other personnel engaged in commodities exchange business;
- (e) to renew, modify, withdraw, suspend or cancel such licenses;
- (f) to promulgate all necessary rules and regulations for carrying out the provisions of the Regulations;
- (g) to prescribe all forms, including the forms and applications for licenses;
- (h) to regulate the registration and functioning of institutions providing services on commodities exchanges;
- (i) specify the code of conduct for Exchange officials and all institutions operating on the Exchange under this Regulations; and
- (j) to carry out any other activity incidental or conducive to the carrying out of its functions under this Regulations.

3. Power of Commission to delegate functions

- 1) The Commission may delegate the performance of any of its functions or the exercise of any of its powers.
- 2) A delegation under this section shall not prevent the concurrent performance or exercise of the powers and duties of the Commission.

- 3) Notwithstanding the delegation of any of its powers under this section, the Commission shall remain responsible for the carrying out of its powers and duties under these Regulations.
- 4) Pursuant to the provisions of sub section 1) of this section, and notwithstanding any provisions to the contrary in this Regulations, a Commodities Exchange licensed hereunder shall have the delegated authority to carry out specified tasks and responsibilities including:-
 - (i) prescribing and enforcing rules and regulations pertaining to minimum requirements for licensing and the operations of warehouse operators and their specialist staff;
 - (ii) licensing of warehouses; and
 - (iii) overseeing and monitoring of rights and obligations of issuers, holders and financiers of warehouse receipts as well as dealing, clearing, settlement and custody of such instruments.

PART II - COMMODITIES EXCHANGE

License

4. Establishment of a Commodity Exchange

- (1) No person shall establish or operate a commodities exchange except under and in accordance with a commodities exchange license granted by the Commission under these Regulations.
- (2) No person shall assist any other person in the operation of a commodities exchange unless that other person is the holder of a commodities exchange license granted by the Commission under these Regulations.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction: -
 - a) in the case of an individual, to a fine not exceeding xxxx penalty units or to imprisonment for a term not exceeding two years or to both;
 - b) in the case of a company, to a fine not exceeding xxxx penalty units; and
 - c) if the offence is a continuing offence, the individual or company is liable to a further fine not exceeding xxxx penalty units for every day that the offence continues after conviction.
- (4) A person convicted of an offence under this section shall, following an assessment by the Commission, be liable to pay to the Commission any monies received or the monetary equivalent of any assets obtained as a result of carrying on commodities business without a license.

5. Licensing Of Commodities Exchanges

- (1) An application under subsection (1) for approval as a commodities exchange shall be made to the Commission in accordance with provisions of part IV of the Securities Industry Regulations.
- (2) No approval shall be granted to any person to operate a commodities exchange other than a body corporate, including an incorporated private partnership.

6. Grant or Refusal of Commodities Exchange license

The grant or refusal of a license under this part shall be in accordance with provisions of Part IV of the Securities Industry Regulations as amended.

Duties and Functions

7. Duties and Functions of a Commodities Exchange

- (1) A commodities exchange shall ensure, as far as is reasonably practicable, an orderly and fair market in the commodities that are traded through its facilities.
- (2) In performing its duties under subsection (1), a commodities exchange shall:-
 - a) Regulations in the interests of the public; and
 - b) Ensure that such interests prevail where they conflict with any other interests the Exchange is required to serve under any other law.
- (3) A commodities exchange shall provide and maintain at all times to the satisfaction of the Commission:-
 - (a) Adequate and properly equipped premises for the conduct of its business;
 - (b) Competent personnel for the conduct of its business; and
 - (c) Automated or other systems with adequate capacity, facilities to meet emergencies and security arrangements.
- (4) A commodities exchange: -
 - i. shall enforce the Exchange's Rules and Regulations;
 - ii. shall be responsible for supervising compliance by all Exchange Actors, other members, issuers of listed commodities, with this Regulations and the Exchange Rules and Regulations ;
 - iii. may issue directives;
 - iv. may subject to the approval of the Commission, amend or suspend the Exchange Rules and Regulations,
 - v. shall make provision for the clearing and settlement of transactions in listed commodities effected through the exchange - including provision for defaults;
 - vi. (i) may appoint a clearinghouse licensed to perform clearinghouse services for the exchange;
 - (ii) shall consult with an appointed clearinghouse when making or amending the Exchange's Rules and Regulations;
 - vii. may do all other things that are necessary for, incidental or conducive to, the proper operation of an Exchange and that are not inconsistent with this Regulations.
- (5) A commodities exchange shall notify the Commission immediately if it becomes aware

- (a) that a member is unable to comply with any financial resources rules and regulations made under this Regulations ; or
- (b) of a financial irregularity or other matter which in the opinion of the older of the commodities exchange may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet that member's legal obligations.

8. Commodities Exchange to assist Commission

A commodities exchange shall provide such assistance to the Commission as the Commission reasonably requires for the performance of its functions, including the furnishing of returns and providing information in respect of dealings in commodities or any other specified information as the Commission may require for the proper administration of this Regulations.

9. Disciplinary action over members of a Commodities Exchange

- (1) Where a commodities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member in accordance with its rules and regulations, the commodities exchange shall, within 7 days of taking such action, give to the Commission in writing particulars of the name of the member, the reason for and nature of the action taken, the amount of any fine, and the period of any suspension.
- (2) Any action taken by a commodities exchange under subsection (1) shall be without prejudice to the power of the Commission to take such action as it sees fit with regard to the member or the license held by the member.

10. Rules and Regulations of the Commodities Exchange

- (1) The Exchange's Rules and Regulations must be consistent with these Regulations.
- (2) Subject to the approval of the Commission, the holder of a commodities exchange license shall make rules and regulations for the proper and efficient regulation, operation, management and control of the commodities exchange.
- (3) Without limiting the general effect of subsection (1), the holder of a commodities exchange license shall make rules and regulations as the Commission may from time to time prescribe.

11. Amendment to Rules and Regulations of a Commodities Exchange

- (1) A commodities exchange shall not amend its rules, except with the prior approval of the Commission.
- (2) The Board of a commodities exchange which intends to amend its rules and regulations, whether by way of rescission, alteration or addition, to the rules and

regulations of a commodities exchange or the listing rules of a commodities exchange - shall apply in writing and shall submit a draft of the proposed amendment to the Commission.

- (3) The Commission shall, within thirty days after receipt of the application, communicate its decision in writing to the commodities exchange concerned that it approves the amendment or that it disapproves the whole or any specified part of the amendment in question and, until such notice is given, the amendment shall not have any effect.

12. Power of Commission to require amendment to Rules

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

Operations of a commodities exchange

13. Membership Management

- (1) The Exchange shall maintain a registration and identification of Members and a database recording their status.
- (2) The Exchange shall enforce membership rules as provided for under the Exchange rules and regulations.
- (3) The Exchange shall operate a system of filing complaints against Members and shall maintain a record of such complaints that shall be made available to the Commission.

14. Trading and Trading System

- (1) It shall be unlawful for a person who is not a Member or a recognized agent or officer of a Member to trade on the Exchange.
- (2) It shall be unlawful for a commodity to be traded on the Exchange without the issuance of:-
 - (a) An Exchange product certificate as to the product quality and grade and
 - (b) An Exchange warehouse receipt as to the product quantity, condition, and location of storage.
- (3) The Exchange shall operate a single trading system, which matches offers and bids

based on open outcry on a physical trading floor or an automated system for remote electronic trading.

- (4) The Exchange shall operate an electronic back office in which transactions on contracts are recorded and which shall facilitate all matters related to members' trades.

15. Market Information Dissemination

- (1) The Exchange shall provide timely and complete price information to the public at large, through a variety of media.
- (2) The Exchange may not withhold or delay price information unreasonably.
- (3) The Exchange shall operate a public electronic price information dissemination system.

16. Exchange Contracts

- (1) The Exchange shall operate with spot or cash contracts in commodities as well as repos.
- (2) The Exchange may, subject to the approval of the Commission, operate with future contracts in commodities.
- (3) The Exchange shall develop the grade basis, date and place of delivery of the commodities and other contractual terms for each contract.

17. Grading and Certification

- (1) The Exchange shall, in conjunction with the Ghana Standards Authority, develop and maintain Exchange-approved grades and standards for the purposes of trading commodities on the Exchange.
- (2) The Exchange shall carry out grading and certification or approve a third party to do the same and to issue an Exchange produce certificate for the purposes of Exchange trading.
- (3) No third-party exchange-approved grading and certification agents shall engage in related commodities trading within or outside the Exchange.

18. Warehousing and Receipts

- (1) Only persons licensed under the provisions of the Warehouse Receipts System Regulations, 2014, may for purposes of Exchange trading, operate warehouses to carry out weighing and inventory management of agricultural commodities and issue warehouse receipts.

- (2) The Exchange shall maintain an automated depository of Exchange -approved negotiable warehouse receipts or authorize a third party (approved by the Commission) to do the same.
- (3) No third-party Exchange-approved warehouse operator shall engage in related agricultural commodities trading within or outside the Exchange.
- (4) Notwithstanding anything to the contrary in this Regulations, no trade shall be permitted in agricultural commodities on the Commodities Exchange without a negotiable warehouse receipt for the relevant commodities.

19. Clearing and Settlement

- (1) A Commodity Exchange shall have a Clearing and Settlement function which will provide matching of all purchases and sales of Exchange-traded contracts on a daily basis and a mechanism for the transfer of funds related to Exchange transactions.
- (2) All transactions done on the Exchange shall be cleared and settled either within the Commodities Exchange itself or in conjunction with a recognized Clearing and Settlement organization or exclusively through third-party clearing and Settlement organization authorized by the Exchange. The Exchange shall make the necessary contractual and other arrangements to give effect to the clearing and settlement business model that the Exchange for the time being chooses.
- (3) In the exercise of the options stated under subsection (1) of this section, they shall comply with provisions, inter alia, of sections 51 and 54 of the Regulations.
- (4) No person shall establish, maintain or provide or assist in establishing, maintaining or providing, or hold itself out as maintaining or providing a clearing and or settlement house for a commodity market unless the person is a body corporate approved by the Commission.
- (5) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding penalty units or to imprisonment for a term not exceeding years or to both.
- (6) The Exchange shall reconcile daily each Member's trading position on trading days. The Exchange shall deliver to each member a daily net obligation statement for each Member on trading days.

20. Market Surveillance

The Exchange shall, establish and maintain the following market surveillance tools: -

- (1) Market loss monitoring, which is a system to track losses of Members;
- (2) Maximum open positions, which is a system to avoid build up of open positions above Exchange-specified limits;

- (3) Price spread limit, which limits allowable price variation on a contract; and/or
- (4) Other similar tools as the Commission may require.

21. Risk Management

The Exchange shall establish and maintain the following risk management systems:

- (1) Member security deposits for the determination of each Member's exposure;
- (2) Settlement guarantee fund, for guaranteeing the net settlement liability of the Exchange;
- (3) Margin requirements, that serve as collateral for each transaction;
- (4) Trading exposure limits, which monitor Member exposure relative to the security deposit;
- (5) Daily settlement of net obligations on market positions on trading days;
- (6) Delivery default penalties, which enforce discipline in delivery of goods; or
- (7) Other similar systems as the Commission may require.

22. Security

The Exchange shall provide and maintain a system for protection of personnel, financial, trade and other data relating to the affairs of the Exchange.

Dispute Resolution

23. Dispute Resolution

- (1) The Exchange shall, subject to the approval of the Commission, establish rules and procedures for the thorough investigation and expeditious resolution of complaints or disputes as between Exchange Actors and their Clients; or amongst Exchange Actors.
- (2) The rules and procedures, with deadlines and appropriate sanctions, shall require that in all cases the complainants or disputants shall exhaust domestic or local remedies as a first stage.
- (3) Accordingly
 - i. The Exchange's rules and regulations shall require that a complaint by an Exchange Actor's client about the Exchange Actor or its Authorized Person (or

vice versa) or a dispute between an Exchange Actor's client and the Exchange Actor or its Authorized Person (or vice versa) shall be initially made to a Compliance Officer of the Exchange Actor with further referral by the aggrieved person, (if not satisfied of the outcome) to the Exchange and with a further possible appeal thence to the Administrative Hearings Committee of the Commission;

- ii. A complaint or dispute among Exchange Actors, arising from Exchange transactions or matters involving the Exchange, failing an amicable settlement among the parties, shall be lodged with the Exchange for settlement with a further possible referral to the Administrative Hearings Committee of the Commission.
- (4) Nothing in the foregoing subsections shall prevent complaints and disputes arising from Exchange transactions or matters involving the Exchange from being resolved through alternative dispute resolution mechanisms under Alternative Dispute Resolution Regulations 2010 (Act 798) by mediation or arbitration.
 - (5) Pursuant to the foregoing subsection (4), the Parties may refer disputes or complaints to any person or institution for mediation or arbitration or to the Alternative Dispute Resolution Centre established under Act 798 to facilitate the arbitration.
 - (6) Accordingly, parties to the dispute may agree to the resolution of disputes or complaints by the Centre through expedited arbitration proceedings or by an arbitrator's adoption of the Expedited Arbitration Proceedings Rules of the Centre set out in the Third Schedule to the Regulations.
 - (7) An agreement by the parties to apply the rules of the Centre to the resolution of their dispute by an arbitrator is subject to modifications as the parties may agree upon in writing.
 - (8) The Exchange shall encourage Exchange Actors, their officers and their parties to Exchange transactions or matters involving the Exchange to resolve all disputes and complaints by resort to remedies through the Exchange, or the alternative dispute resolution mechanisms and pursue litigation through to the Courts only as a last resort.

PART III - SELF-REGULATORY ORGANIZATIONS

24. Qualifications for Recognition and Responsibilities

- (1) A commodities exchange or an independently incorporated third-party clearing, settlement and depository agency, or Exchange Actors' Association formed under this Regulations shall be deemed to be a self-regulatory organization and shall be

recognized by the SEC as such in accordance with provisions of Part II of the Securities Industry Regulations as amended.

- (2) Notwithstanding sub section (1) above, a self regulatory commodities exchange or an independently incorporated third-party clearing, settlement and depository agency, or Exchange Actors' Association formed under this Regulations shall remain so as long as it
- (a) Continues to engage in the commodities business;
 - (b) Has a body of rules and regulations:
 - (i) For the governance of its members which rules and regulations comply with the requirements of this Regulations and are in all respects acceptable to the Commission;
 - (ii) For the protection of the public;
 - (iii) Relating to the discipline of a member or employee of a member who contravenes its rules or this Regulations or regulations made under this Regulations and, without limiting the general effect of the foregoing, may provide for censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of or exclusion from employment;
 - (iv) Specifying the procedure for disciplinary proceedings; and
 - (v) For such other matters as may be prescribed by the Commission from time to time;
 - (vi) Designed to prevent deceptive and manipulative acts and practices and to promote fair trading practices and to facilitate an efficient market;
 - (vii) That do not permit unfair discrimination among persons who use its facilities;
 - (viii) That do not restrain competition to an extent not necessary to achieve the objectives specified in subsections (c) (i), (c)(ii) and (c)(iii) hereof; and
 - (ix) In the case of a clearing, settlement and depository or agency, promote the operation of a prompt and accurate clearing, settlement and depository system; and
 - (x) Safeguard money and commodities in its custody or under its control or for which it is responsible.

25. Annual report of self-regulatory organisation

- (1) A self-regulatory organisation shall within ninety days of the date of its balance sheet, submit to the Commission, an annual report which includes
- (a) a report on the corporate governance policy of the self-regulatory organisation and any other information required by the Commission;
 - (b) audited financial statements prepared in accordance with the International Financial Reporting Standards adopted by the Institute of Chartered Accountants, Ghana; and

- (c) other requirements specified by the Commission.
- (2) The financial statements to be included in an annual report under subsection (1), shall
 - (a) be audited by an audit firm approved by the Commission, and
 - (b) be in accordance with the international standards on auditing adopted by the Institute of Chartered Accountants, Ghana.
 - (3) Where, in the course of audit, the auditor of a self-regulatory organisation has reason to believe that
 - (a) there has been a material adverse change in the risks inherent in the business of that self-regulatory organisation with the potential to adversely affect the ability of the self regulatory organisation to continue as a going concern;
 - (b) the self-regulatory organisation may be in contravention of this Regulations, the Regulations or rules of the Commission;
 - (c) a financial crime has been, is being or is likely to be committed; or
 - (d) serious irregularities have occurred,

that auditor shall report immediately in writing the matter to the Commission.

- (4) A report made under subsection (3) does not constitute a breach of the duties of the auditor.

26. Keeping and inspection of records

- (1) A self-regulatory organization shall:-
 - (a) Make and keep such records in such form and for such periods as the Commission may determine; and
 - (b) File with the Commission prescribed reports in the prescribed form.
- (2) The Commission 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 that organization or any of its members; and
 - (b) Prepare such financial or other reports as the Commission requires.
- (3) A self-regulatory organization shall: -
 - (a) Produce and provide a person authorized by the Commission under subsection (2) with a copy of any record referred to in subsection (1) of this section or any other record that he reasonably requests; and
 - (b) Answer any question he (person authorized by the Commission) asks concerning those records.

27. Sanctions

- (1) Where a self-regulatory organization: -
 - (a) contravenes its rules, this Regulations or regulations made under this Regulations;
 - (b) is unable to comply with its rules, this Regulations or regulations made under this Regulations; or

- (c) fails or is unable to enforce its rules, any provision of this Regulations or of regulations made under this Regulations that it is required to administer or enforce, or fails to comply with an order or direction of the Commission;
- (d) The Commission may make an order:-
 - (i) Censuring the organization;
 - (ii) Limiting its activities, functions or operations; or
 - (iii) Suspending or revoking its license.
- (2) Where a director or officer of a self-regulatory organization contravenes the rules of the organization or the provisions of this Regulations or a regulation made under this Regulations, the Commission may direct the organization to censure him or suspend or remove him from office or employment with the organization.

PART IV - EXCHANGE REGULATIONSORS

Licensing Of Exchange Actors

28. Requirement for a License

- (1) No person shall operate as an Exchange Actor unless that person is licensed by the Commission.
- (2) Every Commodities Exchange Regulationsor shall employ an Authorized Person, who shall be an individual. No person shall operate as an Authorized Person unless he has been duly licensed by the Commission.
- (3) Any person who contravenes subsections (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding not exceeding xxxx penalty units or to imprisonment for a term not exceeding xxx years or to both.
- (4) Any person desiring to be licensed in any of the roles as an Exchange Actor or an Authorized Person shall submit an application to the Commission. The application shall be made in such form and manner as prescribed by the Commission's directives, giving such information and facts, as the Commission may deem necessary.
- (5) The Commission may grant or review a license subject to such conditions or restrictions (including duration) as it considers fit and the Commission may at any time by written notice to an Exchange Actor or an Authorized Person vary any condition or restriction in relation to the license.
- (6) The Commission shall fix and establish from time to time reasonable fees and charges for licensing and renewal thereof.

29. Criteria for the grant of an Exchange Actor's License

- (1) There shall be at least three categories of Commodities Exchange Regulationsors.

- (2) A Commodities Exchange Actor shall be either Commodities Exchange Dealer or a Commodities Exchange Broker or a Commodities Exchange Broker / Dealer.
- (3) A Commodities Exchange Dealer shall be licensed to buy and sell or otherwise deal in commodities – linked warehouse receipts on a Commodities Exchange only on behalf of the Commodities Exchange Dealer itself.
- (4) A Commodities Exchange Broker shall be licensed to buy and sell or otherwise deal in commodities linked warehouse receipts on a Commodities Exchange only on behalf of the Clients of the said Commodities Exchange Broker.
- (5) A Commodities Exchange Broker / Dealer shall be licensed to buy and sell or otherwise deal in commodities linked warehouse receipts on a Commodities Exchange only on behalf of the Clients of the said Commodities Exchange Broker and on its own accounts as a principal.
- (6) A Licence to operate as a Commodities Exchange Dealer or a may be issued by the Commission to an individual or registered business name, or an incorporated partnership or a body corporate.
- (7) A Licence to operate as a Commodities Exchange Broker or a Commodities Exchange Broker/Dealer shall be issued by the Commission only to a body corporate.
- (8) An Exchange Actor's licence shall only be granted if the Exchange Actor meets and continues to meet the minimum financial requirements determined by the Commission either generally or specifically, or as are provided in the rules of a commodities exchange approved by the Commission.
 - (a) Where an application is made for the grant or renewal of Exchange Actor's licence, and where the Applicant must be body corporate, the Commission shall refuse the application if:-
 - (a) The body corporate does not have the prescribed minimum paid –up capital and is unable to meet the prescribed minimum net liquidity capital requirements in cash or in readily marketable financial instruments or if in the opinion of the Commission, the applicant will be unable to comply with the applicable financial resources requirements;
 - (b) From information available to the Commission, having regard to registered holders of at least 25% of beneficial interest in the equity in the applicant corporate entity, and or its key directors and /or its key management personnel, the applicant will be unable to perform its functions efficiently, honestly, or fairly;
 - (c) The body corporate is in the course of being wound up ;

- (d) The body corporate is one in respect of which a receiver, or a receiver and manager, has been appointed by law;
 - (e) The body corporate has, whether within or outside Ghana, entered into a compromise or scheme of arrangement; or
 - (f) The Commission is not satisfied that the applicant has a well established business and risk management system.
- (b) Where an application is made for the grant or renewal of an Authorized Person's License which can only be held by an individual or where an individual applies for the grant or renewal of an Exchange Dealer's license, the Commission shall refuse the application if:-
- (a) The Commission has reason to believe he will not perform his duties efficiently, honestly and fairly or meet his financial obligations as they fall due;
 - (b) The Applicant has been convicted of a crime involving fraud in the preceding ten years and sentenced to a prison term of at least 3 months;
 - (c) The Applicant has not had the requisite education or training (including successfully taking a prescribed examination) or;
 - (d) A levy of execution in respect of the Applicant has not been levied and not satisfied; or
 - (e) The Applicant will have no premises from which to operate.

30. False statements in support of license applications

A person who, in connection with an application for a license or for the renewal of a license, willfully and knowingly makes a statement which is false or misleading in a material particular or willfully omits to state any matter or thing without which the application is misleading in respect of a material particular commits an offence and is liable on conviction to a fine not exceeding xxxx penalty units or to imprisonment for a term not exceeding two years or to both.

31. Requirements to be satisfied for License to be issued

Any person desiring to be licensed as an Exchange Actor shall: -

- (1) Fulfill the minimum financial requirement prescribed by the Commission's directives including capital adequacy, solvency and liquidity requirements;
- (2) Submit the names and addresses of managers of all branch offices, and the names of such officers, (and where applicable) directors, and shareholders, as the Commission may direct;

- (3) Have a well-established business and risk management system;
- (4) Meet any requirements under the Commodities Exchanges Rules and Regulations; and
- (5) Fulfill other requirements stipulated by directives of the Commission.

32. Appeal against refusal to grant or renew license

Where –

- (a) the Commission refuses to grant or renew a license under section 29;
- (b) the Commission revokes a license under section 35; or
- (c) the license is revoked or suspended, or a licensed person is reprimanded, under section 27, any person who is aggrieved by the decision of the Commission may, within one month after he is notified of the decision, appeal to the Minister whose decision shall be final.

33. Operation pending renewal of licenses

Where a person who holds a license issued under these Regulations has, before the expiration of the license, applied for a renewal of the license and the license has not been issued, he shall not, until the license is renewed or his application for the license is refused or withdrawn, be held liable for not holding a license.

34. Reports

- (1) Exchange Actors, when licensed hereunder, shall continue to report and furnish to the Commission the information required under Regulations and other information pertaining to such Exchange Actors' Association as the Commission may require.
- (2) Where there are changes in the particulars of an Exchange Actor, including matters to which sections 30, 31 and 32 relate, the Exchange Actor shall within 14 days of any change occurring, give to the Commission notice of such change.

35. Power to Suspend or Revoke the License of an Exchange Actor

- (1) The Commission shall have authorization to suspend for a period not to exceed 180 days or to revoke the recognition of any Exchange Actor on a showing that such Exchange Actor has violated any provisions of this Regulations and/or Rules and Regulations made hereunder;
- (2) Suspension or revocation under this section shall only be after a notice to such Exchange Actor and upon a hearing on the record – except where a license is

deemed revoked under subsection (4) hereunder or the revocation is at the request of the licensee under subsection (7) hereunder.

- (3) Any notice of suspension or revocation issued under this section shall remain in effect and shall bar the Exchange Actor from engaging in Exchange transactions until the matter is decided by the High Court or terminated by the Commission.
- (4) An Exchange Actor's license shall be deemed to be revoked if the license was issued to a company and the company is wound up.
- (5) (a) The Commission may revoke a license granted to an individual under this Part if that individual –
 - i. is shown by certified medical evidence to be mentally or physically incapable of performing the activities to which the license relates;
 - ii. is adjudged a bankrupt, in Ghana or elsewhere;
 - iii. is convicted, whether in Ghana or elsewhere, of fraud or any other offence involving dishonesty;
 - iv. is convicted of an offence under this Regulations or regulations made under this Regulations;
 - v. contravenes or fails to comply with any condition applicable in respect of the license;
 - vi. ceases to carry on the business for which that individual is licensed;
 - vii. is the holder of an Authorized Person's license and the license of the licensee to whom that individual is accredited is revoked or suspended;
 - viii. fails to pay the annual license fee as prescribed on or before the anniversary of the day of the grant of the license; or
 - ix. by reason of any other circumstances, is no longer qualified to hold a license.
- (b) The Commission may revoke a license granted to a company under this Part if:
 - i. on any ground on which the Commission may refuse to grant a license under section 31(3); or
 - ii. the company goes into liquidation or is ordered to be wound up;
 - iii. a receiver or manager of all or a substantial part of the property of the company is appointed;
 - iv. the company ceases to carry on the business for which it is licensed;
 - v. it has reason to believe that the company, or any of its directors or employees, has not performed its or his duties honestly and fairly;
 - vi. the company contravenes or fails to comply with any condition applicable in respect of the license;
 - vii. the company is in breach of this Regulations or any regulation made under this Regulations;
 - viii. where applicable, the company does not continue to employ at least one person who holds the appropriate Authorized Person's license granted under this Regulations;
 - ix. the company fails to pay its annual license fee as prescribed on or before the anniversary of the day of the grant of its license; or

- x. if it appears to the Commission that its key management person or executive Director has been convicted of a crime involving fraud in the preceding ten years and sentenced to a prison term of at least 3 months or, has not had the requisite education or training or competence;
- xi. if a levy of execution in respect of it has not been satisfied;
- xii. if it has entered into any composition or arrangement with its creditors;
- xiii. if the licensed person contravenes or fails to comply with any of the conditions or restrictions applicable in respect of the license;
- xiv. by reason of any other circumstances, the company is no longer qualified to hold a license.

- (6) The Commission may revoke the license of a person at the request of that person.
- (7) The Commission shall not revoke a license under subsection (4) or (5) without first giving such person an opportunity of being heard.

36. Effect of revocation or suspension of license

- (1) A person whose license is revoked under section 37 or suspended under section 29 shall, for the purposes of this Part, be deemed not to be licensed from the date that the Commission revokes or suspends the license, as the case may be.
- (2) A revocation or suspension of a license of a person shall not operate so as to:
 - a. avoid or affect any agreement, transaction or arrangement relating to the trading in commodity contracts entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the license; or
 - b. affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

PART V - UNLAWFUL COMMODITIES EXCHANGE TRANSREGULATIONS

Offences

37. Insider dealing

- (1) A person who has information as an insider commits the offence of insider dealing if that person:
 - a. Deals in commodities that are price-sensitive in relation to that information;
 - b. Encourages another person to deal in commodities that are (whether or not that other person knows it) price-affected commodities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place; or

- c. Discloses the information, otherwise than in the proper performance of the functions of that individual's employment, office or profession, to another person.
- (2) (a) A person who commits an offence under subsection (1) is liable on summary conviction, to a fine not exceeding penalty units or to imprisonment for a term not exceeding years or to both; and
 - (b) The court may make an order imposing on the convicted person a penalty, payable to the Commission, of an amount not exceeding 3 times the amount of any profit gained or loss avoided by any person as a result of the insider dealing.
- (3) In addition to the penalty stated in subsection (2) a person who is convicted of an offence under this section shall be: -
 - (a) Liable to compensate any person for any direct loss incurred by that person as a result of the insider dealing unless that other person was a party to the insider dealing; and
 - (b) Accountable to the Issuer for any direct benefit or advantage received or receivable as a result of the insider dealing.
 - (4) No contract shall be void or unenforceable by reason only of an offence under this Section.

38. Insiders

- (1) An individual has information as an insider if: -
 - a. It is inside information, and that individual knows that it is inside information; and
 - b. That individual has the information, and knows that he or she has the information, from an inside source.
- (2) For the purposes of subsection (1), an individual has information from an inside source if the individual has it through: -
 - (i) Being a director, employee or shareholder of an issuer of commodities, or
 - (ii) Having access to the information by virtue of that individual's employment, office or profession; or
- (3) The direct or indirect source of the individual's information is through subsection (2) i) or (ii) above.

39. Inside information

- (1) "Inside information" under section 38 means information which: -
 - a. relates to particular commodities or to a particular issuer of commodities and not to commodities generally or to issuers of commodities generally,
 - b. is specific or precise,
 - c. has not been made public, or

- d. if it were made public would be likely to have a significant effect on the price of any commodities; and
- (2) Commodities are “price-sensitive commodities, in relation to inside information, if the information would, if made public, be likely to have a significant effect on the price of the commodities.

40. Information “made public”

- (1) For the purposes of section 39 above, “made public”, in relation to information, shall be construed in accordance with the following provisions of this section, but these provisions shall not be exhaustive as to the meaning of that expression.
- (2) Information is made public if: -
- a. It is published in accordance with the rules of a commodities exchange for the purpose of informing investors and their professional advisers;
 - b. It is contained in records which by virtue of any enactment are open to inspection by the public;
 - c. It can be readily acquired by those likely to deal in any securities:-
 - i. To which the information relates, or
 - ii. Of an issuer to which the information relates; or
 - iii. It is derived from information which has been made public.

41. False trading

- (1) A person commits an offence if that person, creates, or does anything that is intended or knows that it is likely to create, a false or misleading appearance—
- a. Of active trading in commodities on a licensed commodities exchange; or
 - b. In the price of commodities traded on a licensed commodities exchange.
- (2) Without limiting the general nature of what constitutes a false or misleading appearance of active trading under subsection (1), a false or misleading appearance of active trading in commodities is created for the purpose of this section if a person: -
- a. Carries out or offers to do so, either directly or indirectly, a sale or purchase of commodities that does not involve a change in the beneficial ownership of them;
 - b. Offers to sell commodities at a price that is substantially the same as the price at which that person has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to buy the same or substantially the same, number of them; or
 - c. Offers to buy the commodities at a price that is substantially the same as the price at which that person has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same, number of them.

42. Price rigging

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

43. Market manipulation

A person commits an offence if that person enters into or carries out, either directly or indirectly, a transaction in commodities that by itself or in conjunction with another transaction: -

- a. increases, or is likely to increase, their market price with the intention of inducing other persons to sell or to purchase, or to refrain from selling or purchasing, commodities by the same company or a related company;
- b. Reduces, or is likely to reduce, their market price with the intention of inducing other persons to sell or purchase, or to refrain from selling or purchasing, commodities by the same company or a related company; or
- c. Stabilize, or is likely to stabilize, their market price with the intention of inducing other persons to sell or purchase, or refrain from selling or purchasing, commodities issued by the same buyer or seller or by a related buyer or seller.

44. Use of deceptive statements as inducements

A person commits an offence if that person induces or attempts to induce another person to trade at the Exchange: -

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

45. Fraudulent transactions

A person commits an offence if that person, directly or indirectly, in connection with any trade with any other person involving the purchase, sale or exchange of commodities: -

- a. Employs any device, scheme or artifice to defraud that other person; or
- b. Engages in any Regulations, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, on that other person.

46. False or misleading statement inducing Exchange transactions

A person commits an offence if that person, directly or indirectly, for the purpose of inducing the sale or purchase of the commodities by any other person of any company,

or to raise, lower or stabilize the market price of that commodities, makes with respect to those commodities:

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

47. Illegal clearing and settlement and central depository services

A person commits an offence if that person, directly or indirectly, offers or purports to provide clearing, settlement and depository services in relation to commodities exchange transaction or instrument unless the person is recognized as such by the Commission.

48. Penalties for offences under sections 38 to 47 above

A person who commits an offence under sections 38, 42 , 43, 44, 45, 46, 47, is liable on summary conviction: -

- a. in the case of an individual, to a fine of not less than xxxx penalty units or to imprisonment for 3 years or to both;
- b. in the case of a company, to a fine of not less than xxxx penalty units

49. Liability to pay damages

- (1) A person who is convicted of an offence under sections 38, 42, 43, 44, 45, 46, 47, or 49 shall, in addition to criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the Regulations or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss concerned.
- (2) Nothing in subsection (1) limits or diminishes any civil liability, which any person may incur under any other law.

PART VI - SETTLEMENT GUARANTEE FUND

50. Establishment of Settlement Guarantee Fund

Where, in the exercise of the related options under section 20 of this Regulations, a Commodity Exchange decides to provide the clearing, settlement and depository function itself for all transactions done on the Exchange, the Exchange shall set up a Settlement Guarantee Fund.

51. Utilization of Settlement Guarantee Fund

- (1) The monies in the Settlement Guarantee Fund may be applied for:

- a. Offsetting the expenses and maintenance of the Settlement Guarantee Fund;
 - b. Temporary application to meet shortfalls and deficiencies arising out of the Clearing and Settlement obligations of the Clearing Institutions carried out in accordance with the rules and regulations of a Commodity Exchange;
 - c. payment of premium on insurance coverage by a Commodity Exchange, if any; and
 - d. Any other purpose as may be specified by the Commission.
- (2) For the purposes of section 50 and sub-section 51 (1), the Board of a Commodity Exchange may, by resolution, appoint a management subcommittee to administer the Settlement Guarantee Fund.

PART VII - ADDITIONAL POWERS OF THE COMMISSION

52. Emergency Powers of the Commission

- (1) Whenever the Commission is of the opinion that the orderly transaction of business on a commodities exchange is being, or is likely to be, prevented because:-
- a. Of an impending emergency or natural disaster, whether in Ghana or elsewhere; or
 - b. There exists an economic or financial crisis, whether in Ghana or elsewhere, or
 - c. any other circumstance, which is likely to prevent orderly trading on a commodity exchange,

the Commission may direct a commodity exchange or a clearing house to take such action as it considers necessary to maintain or restore orderly trading in, or liquidation of, any commodity contract or any class of commodity contracts including but not limited to :-

- i. terminating or suspending trading on a commodity market or a clearing house;
 - ii. confining trading to liquidation of commodity contracts;
 - iii. ordering the liquidation of all positions or part thereof or the reduction in such positions;
 - iv. limiting trading to a specific price range;
 - v. modifying trading days or hours;
 - vi. altering conditions of delivery;
 - vii. fixing the settlement price at which contracts are to be liquidated;
 - viii. requiring any person to Regulations in a specified manner in relation to trading in commodity contracts or any class of commodity contracts;
 - ix. requiring additional margins for any contracts; and/or
 - x. modifying or suspending any of the business rules of a commodity market, and the exchange or clearing house shall comply with that direction.
- (2) Where a Commodity Exchange, a Clearing House, a Central Depository or an Exchange Actor fails to comply with the direction of the Commission under subsection (1) within such time as is specified by the Commission, the Commission

may itself take action to set emergency margin levels in any commodity contract or class of commodity contracts, or to fix limits that may apply to market positions acquired in good faith prior to the date of the Commission's action or such other action, including but not limited to those specified in subsection (1), as it thinks are necessary to maintain or restore orderly trading in, or liquidation of, commodity contracts or any class of commodity contracts.

53. Power of Commission to issue directions to commodities exchange

Where the Commission is satisfied that it is necessary for the protection of the market or for the proper regulation of a commodities exchange, the Commission may issue direction to the holder of a commodities exchange with respect to:-

- a. Trading on or through its facilities generally or with respect to the trading of a particular security;
- b. The manner in which the commodities exchange carries on any aspect of its business, including the manner of reporting off-market trades by members; or
- c. Any other matter that the Commission considers necessary for the effective administration of these Regulations; and the holder of the commodities exchange license shall comply with the direction.

54. Power of Commission to call for information

- (1) The Commission may, by notice in writing, require a licensee to furnish it with such information as it may reasonably require for the exercise of its functions within such reasonable time and verified in such manner as it may specify.
- (2) The duty to supply information under this section applies notwithstanding any other enactment or rule of law in Ghana.

55. Right to exchange information

- (1) The Commission, a commodities exchange, and clearing, settlement and depositary organizations shall have the right to supply each other with information about their commodities business and
 - a. In the case of a commodities exchange, information on the commodities business of any of its members; and
 - b. In the case of clearing, settlement and depositary organizations, information on the commodities business of any of its participants.
- (2) The right to exchange and the duty to supply, information under this section applies notwithstanding any other enactment or rule of law in Ghana.

56. Information relating to transactions

- (1) The Commission or a person authorized in writing by the Commission for the purpose of this section may require:-

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

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

(2) The information that may be required under subsection (1) include:-

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

(3) A person commits an offence if that person:-

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

57. Power of Commission to inspect

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

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

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

- a. Enter the licensee’s premises notified to the Commission under this Regulations;

- b. Require the licensee, or any other person whom he reasonably believes is in possession of or has under his control any record or other document referred to in subsection (1), to produce it to him; and
 - c. Inspect and make copies, or take extracts from, and where necessary in an appropriate case to take possession of, such records or other documents.
- (4) For the purpose of an inspection under this section, the licensee or other person mentioned in subsection (3) shall afford an authorized person access to the records or other documents as may be reasonably required for the inspection, and shall produce to the authorized person such records or other documents as he may reasonably require.
- (5) Any person who, without reasonable excuse, contravenes subsection (4) commits an offence.

58. Power of Commission to investigate

- (1) Where the Commission has reasonable grounds to believe that: -
- a. An offence under this Regulations or regulations made under this Regulations has been committed;
 - b. A person may have committed a breach of trust, fraud or misconduct: -
 - i. In dealing in commodities,
 - ii. In the management of investment in commodities, or
 - iii. In giving advice as regards the acquisition, disposal, purchase or sale, or otherwise investing in, any commodities; or
 - c. the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph (b) is not in the interest of the market or the public interest;
 - d. The Commission may in writing appoint a person (the “investigator”) to investigate any matter referred to in paragraphs (a) to (c) and to report the results of the investigation to the Commission.
- (2) Any person who is reasonably believed or suspected by the investigator to have in his possession or under his control any record or other document which contains, or which is likely to contain, information relevant to an investigation under this section, or who is so believed or suspected of otherwise having such information in his possession or under his control, shall: -
- a. produce to the investigator, within such time and at such place as he may reasonably require, any document specified by the investigator which is, or may be, relevant to the investigation, and which is in his possession or under his control;
 - b. if so required by the investigator, give to him such explanation or further particulars in respect of a document produced in compliance with a requirement under paragraph (a) as the investigator shall specify; and
 - c. attend before the investigator at such time and place as the investigator may reasonably require in writing, and answer truthfully and to the best of his ability under oath (which oath the investigator is hereby empowered to administer) such

questions relating to the matters under investigation as the investigator may put to him.

- (3) A person commits an offence if, without reasonable excuse, that person:-
 - a. Fails to produce a record or other document which that person is required to produce under paragraph (2)(a);
 - b. Fails to give an explanation or particulars required under paragraph (2)(b);
 - c. Fails to comply with a requirement under paragraph (2)(c) to attend before the investigator; or
 - d. Fails to answer a question put to him by the investigator under paragraph (2)(c), or in answering the question says anything which that person knows to be false or misleading in a material particular or who in so answering recklessly makes a false statement.

59. Appeal

Any party adversely affected by the decision of the Commission under Section 52 above of these Regulations may petition the High Court.

PART VIII - MISCELLANEOUS PROVISIONS

60. Disciplinary action over members of a commodities exchange

- (1) Where a commodities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against an Exchange Actor in accordance with its rules, the commodities exchange shall, within 7 days of taking such action, give to the Commission in writing particulars of the name of the Exchange Actor, the reason for and nature of the action taken, the amount of any fine, and the period of any suspension.
- (2) Any action taken by a commodities exchange under subsection (1) shall be without prejudice to the power of the Commission to take such action as it sees fit with regard to the member or the license held by the member.

61. Reasons for Revocation of Licence

- (1) The Commission may revoke any approval granted under section 6 if-
 - a. the body corporate ceases to operate as a Commodities Exchange;
 - b. the body corporate is being wound up;
 - c. the body corporate is operating in a manner detrimental to the public interest; or
 - d. any information provided to the Commission under this Regulations was false or misleading in a material particular.
- (2) For the purposes of subsection (1), a body corporate shall be deemed to have ceased to operate as a commodities market, if it has ceased to operate for more than 30 days, - unless it has obtained the approval of the Commission to do so, or unless it has ceased to operate by virtue of any direction issued by the Commission under this Regulations.

62. Commission's duty to publish in Gazette

- (1) The Commission shall publish in the Gazette notice of approval for the establishment of a commodities exchange and every cancellation or suspension of any approval.
- (2) Where the Commission is of the opinion that an approval granted to a commodities exchange should be withdrawn in the public interest, it may serve on the Board of that commodities exchange a written notice that it is considering the withdrawal of the approval for the reasons stated in the notice and after giving an opportunity to the council to be heard on the matter, it may cancel the approval.
- (3) A cancellation under subsection (1) shall not take effect until after the expiration of three months from the date on which the cancellation is published in the Gazette.
- (4) With effect from the date on which a notice of cancellation of approval under subsection (1) is published in the Gazette, the Council shall ensure that trading on the commodities exchange ceases.
- (5) During the three months between the said publication and the effective date of the cancellation, the council shall take steps to wind up the business of the commodities exchange.

63. General Penalty

Where a person does an Regulations which constitutes an offence under any provision of this Regulations, then except where otherwise specifically provided for in that provision, the person shall be liable upon summary conviction to a fine not exceeding penalty units or to imprisonment for a term not exceeding years or both.

i. Interpretation

- (1) In this Regulations, unless the context otherwise requires:-

"Regulations" means the Commodities Exchanges Regulations;

"Authorized person" means a person in the direct employment of, or acting for, or by arrangement with a licensed Exchange Actor of a Commodities Exchange who is licensed by the Commission and who is accredited to perform for that Exchange Actor any of the functions of a licensed Exchange Actor (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise and whether the related Exchange Actor operates as an agent or as a principal;

"Centre" means the Alternative Dispute Resolution Centre established under Regulations 798

"Clearing and settlement" means the procedure by which an organization acts as an intermediary and assumes the role of a buyer and seller for Exchange-traded

transact in order to reconcile orders between transacting parties, and ensures the physical or financial settlement of the said transactions;

"Clearing institution" or **"clearing organization"** means a domestic bank or similar financial institution recognized by the Commission;

"Commodity" means a product which is interchangeable with another product of the same kind;

"Commodities exchange" means an exchange licensed under this Regulations where standardized commodities-linked contracts are traded;

"Commodities contract" means -

- (a) a commodities spot or cash contract;
- (b) a commodities forward contract;
- (c) any contract made pursuant to trading in differences with respect to a commodity, not being a commodity futures contract; or
- (d) any contract made pursuant to a transaction in leveraged commodity trading;

"Commodities forward contract" means a contract the effect of which is that one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at that time, but does not include a commodity futures contract;

"Commodities futures contract" means a contract the effect of which is that one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a pre determined price.

"Commission" means the Securities and Exchange Commission established under section 1 of the Securities Industry Regulations, 1993 PNDCL 333 (as amended) and appointed under section 3 of this Regulations as the regulator and administrator of this Regulations;

"Contract" means a standardized agreement to buy or sell a specified commodity, detailing the amount, grade and price of the commodity and the date on which the contract will mature and become deliverable for purposes of trading on the Exchange;

"Defaulter" means a participant who is the subject of any default proceedings;

"Default proceedings" means any proceedings or other action taken by a clearing agency under its default rules;

"Default rules", means the rules required under section 8(2) (f) of this Regulations;

"Emergency" means any major market disturbance, which prevents the normal functioning of the market;

"Exchange Regulationsor" means any individual or corporate entity recognized by the Commission which engages in the business of buying and/or selling Exchange - traded commodities - linked contrRegulations in warehouse receipts for commodities for others (i.e. as an agent) or for its own account (i.e. as a principal); An Exchange Regulationsor may be an "Exchange Commodities Broker", an "Exchange Commodities Dealer" or an "Exchange Commodities Broker/Dealer".

"Exchange Commodities Broker" means a person who, as agent, carries on the business of buying and/or selling of exchange-traded commodities- linked contrRegulations

for warehouse receipts, whether or not the business is part of, or is carried on in conjunction with, any other business;

"Exchange Commodities Dealer" means a person who, **as principal**, carries on the business of buying and/or selling of exchange - traded commodities - linked contracts for warehouse receipts, whether or not the business is part of, or is carried on in conjunction with, any other business; whether or not the business is part of, or is carried on in conjunction with, any other business;

"Exchange Commodities Broker/Dealer" means a person who, **as a principal or agent**, carries on the business of buying and/or selling of exchange-traded commodities-linked contracts for warehouse receipts, whether or not the business is part of, or is carried on in conjunction with, any other business;

"Insider dealing" means buying or selling an Exchange traded contract using non-public information, in breach of a fiduciary duty or other relationship of trust and confidence, proscribed under the section 39 of this Regulations;

"License" means a license issued under the Regulations and includes any renewals and amendments thereof except where the context requires otherwise;

"Manipulation" means any conduct likely to mislead or deceive market participants concerning the value and/or trading volume of a commodity proscribed under the section 45 of these Regulations;

"Member" means in relation to the buying or selling of commodities—linked contracts in warehouse receipts in commodities on the Exchange, as an Exchange Actor;

"Minister" means in relation to section 3 (g) of this Regulations, the sector Minister responsible for the Commission.

"Rules and regulations" means rules and regulations made by the Commission or made by the Board of the Commodities Exchange under this Regulations; and includes directives, guidelines as well as manuals issued by the Commission or the Commodities Exchange consistent with the provisions of this Regulations.

"Settlement", in relation to a market contract, means the discharge, whether partial or otherwise, of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise;

"Suspension" means the temporary removal of a license actuated by any action or measure taken pursuant to the provisions of the Regulations;

"Warehouse receipt" means an acknowledgement in writing or in electronic form issued by a licensed warehouse operator or his duly authorized representative of the receipt for storage of goods not owned by the licensed warehouse operator'.

(2) In this Regulations:

(i) words denoting masculine include feminine; and

(ii) unless the context otherwise requires words denoting the singular number; shall include the plural and vice versa.

