

GHANA

SECURITIES INDUSTRY ACT 2016 (Act 929)

DRAFT

**SECURITIES INDUSTRY (COMMODITY EXCHANGE
TRADING) REGULATIONS 2017**

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SECURITIES INDUSTRY (COMMODITY EXCHANGE TRADING) REGULATIONS 2017

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SECURITIES INDUSTRY (COMMODITY EXCHANGE TRADING) REGULATIONS 2017

PART ONE PRELIMINARY

1. Definitions

In these regulations –

“Act” means the Securities Industry Act 2016 (Act 929);

“Commission” means the Securities and Exchange Commission established by section 1 of the Act;

“accredited” means a person accredited to a commodity dealer or commodity trading adviser as a representative;

“clearing house”, in relation to a commodity exchange, means a person who provides a facility for the –

- (a) clearing or settlement of commodity contracts traded on the exchange; and
- (b) making of adjustments to the contractual obligation arising out of those commodity contracts;

“commodity” means –

- (a) agricultural, livestock, fishery, forestry, mining or energy goods, and any product that is manufactured or processed from any such goods;
- (b) financial instruments;
- (c) an index, right or interest in any such commodity;
- (d) any other matter as may be determined by the Commission through official Gazette notification to be the subject of a commodity contract;

“commodity contract” means a –

- (a) spot commodity contract;
- (b) forward commodity contract;
- (c) futures commodity contract;
- (d) derivative commodity contract;
- (e) such other commodity contract or class of commodity contract as the Commission may direct;

“commodity dealer” means a person who, by way of commodity exchange business (whether as principal or agent) –

- (a) makes or offers to make with any person, or induces or attempts to induce any person to enter into or to offer to enter into any agreement for or with a view to the purchase or sale of a commodity contract; or
- (b) solicits or accepts any order for, or otherwise dealing in, a commodity contract;

“commodity dealer’s representative” means an individual who acts for, or by arrangement, with a commodity dealer, and who performs any of the functions of that commodity dealer in connection with trading in commodity contracts (other than work ordinarily performed by accountants, clerks or cashiers) whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“commodity exchange” means as defined in the Act

“commodity exchange business” means trading in, or advising on trading in, commodity contracts on a licensed commodity exchange;

“commodity trading adviser” means a person who, by way of business in respect of trading in commodity contracts on a commodity exchange –

- (a) gives advice on whether, which, the time at which or the terms or conditions of which, commodity contracts are to be entered into; or
- (b) issues analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on whether, which, the time at which, or the terms or conditions on which, commodity contracts are to be entered into, but does not include –
 - (i) a licenced commodity dealer who gives such advice or issues such analyses or reports wholly incidental to the carrying out of his business as a commodity dealer;
 - (ii) a person who gives such advice or issues such analyses or reports –
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

“commodity trading adviser’s representative” means an individual in the employment of, or acting for, or by arrangement, with a commodity

trading adviser, who performs for that commodity trading adviser any of the functions of a commodity trading adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“derivative commodity contract” means a contract the effect of which is that –

- (a) one party agrees to deliver to the other party a specified commodity, or a specified quantity of a specified commodity, at a specified future time and at a specified price payable at that time, pursuant to the terms and conditions of the rules of the commodity exchange at which the contract is made; or
- (b) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the rules of the commodity exchange at which the contract is made, and includes options on contracts of the kind described in paragraph (a) or (b);

“director” includes a person occupying the position of director by whatever name called;

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

and any other personnel that may be determined by the Commission to be engaged in commodity exchange business

"market contract" means –

- (a) a contract subject to the rules of a clearing house entered into by the clearing house with a clearing member under a novation which is both in accordance with those rules and for the purpose of the clearing and settlement of transactions using the clearing facility and subject to the rules of a clearing house whether before or after default proceedings have commenced; or

- (b) a transaction which is being cleared or settled using the clearing facility and subject to the rules of a clearing house, whether or not a novation referred to in paragraph (a) is to take place;

“market operator” means a person duly licensed by the Commission to perform specific functions in the securities market;

“member” means a person who holds membership of any class or description of a commodity exchange, whether or not he holds any shares in the share capital of the commodity exchange;

“principal”, in relation to an accredited representative, means a person whom the representative is in the direct employment of, acting for or by arrangement with, and for whom the representative carries out any commodity exchange business;

“representative” means a commodity dealer’s representative or a commodity trading adviser’s representative, as the case may be;

“rules” in relation to a commodity exchange or clearing house, means the rules, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of –

- (a) the commodity exchange or clearing house and its members or clearing members, as the case may be;
- (b) other persons in relation to it, whether or not those rules, by-laws or similar body of statements are made by the commodity exchange or clearing house or are contained in its constituent documents;

“spot commodity trading” means the purchase or sale of a commodity at its current market or spot price, where it is intended that such transaction results in the physical delivery of the commodity, and “spot commodity contract” shall be construed accordingly;

“substantial shareholder” means a shareholder entitled to exercise or control the exercise of thirty percent or more of the voting power at a general meeting of the company or a person who is in a position to control the composition of a majority of the board of directors of a company;

“trading in commodity contracts” means (whether as principal or agent) –

- (a) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into

- any agreement for or with a view to the purchase or sale of a commodity contract; or
- (b) soliciting or accepting any order for, or otherwise dealing in, a commodity contract.

“warehouse” means any building, structure or other protected enclosure licenced by the SEC or his delegate to be used for the storage or conditioning of commodities for the purposes of commodity exchange trading;

“warehouse inspector” means a person empowered to inspect warehouses and commodities kept therein to ensure that the warehouse operator complies with the Regulations and the conditions of the operator’s licence;

“ warehouse operator” means a person who for regard engages in the business of operating a warehouse for receiving, storing, handling of goods for compensation or an agent or employee of that person; and

“warehouse receipt” means an acknowledgement, in writing or electronic form, issued by a warehouse operator or the authorised representative of the warehouse operator of the receipt for storage of goods that are not owned by the warehouse operator.

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 commodity exchange business, to license Exchange Actors and other personnel engaged in commodity 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 commodity exchange 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 Commodity Exchange. 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 4 to 6. *Clause 4* provides for the legality of the establishment of commodity exchange 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 7 to 12. *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 commodity 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 13 to 22. *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 commodity 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 Commodity Exchange Dealer, Commodity Exchange Broker and Commodity 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 commodity 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 reasons by which the Commission may revoke any approval granted under Clause 7. *Clause 61* mandates the Commission to publish in a Gazette, the notice of approval for the establishment of a commodity exchange and every cancellation or suspension of any approval. *Clause 62* 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 63* 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

IN the exercise of the powers conferred on the Minister responsible for Finance by Section 214 of the Securities Industry Act 2016 (Act 929) 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 Act, 2016 (Act 929)

2. Functions of Commission under these Regulations

The functions of the Commission under these Regulations are to: –

- (a) to license, supervise, monitor and regulate the activities of commodity exchanges and exchange actors ;
- (b) take such steps as it considers appropriate to ensure that these regulations are complied with;
- (c) take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of commodity exchange business;
- (d)
- (e)
- (f) to approve the rules of commodity exchanges and clearing houses;
- (g) set standards of competence for, and promote, encourage, enforce the proper conduct and integrity of exchange actors;
- (h) promote understanding by the public of commodity exchange markets and of the benefits, risks and liabilities associated with investing;
- (i) counter and suppress illegal, improper and unfair practices in commodity exchange markets;
- (j) to determine the rate of, and levy the fees and other charges for carrying out the provisions of this Regulations;
- (k)
- (l) to carry out any other activity incidental or conducive to the carrying out of its functions under this Regulations.
- (m)

3. Powers of the Commission to delegate Functions

- (1) The Commission may delegate the performance of any of its functions or the exercise of any of its powers under these regulations to a person as the Commission may so determine, as being capable of exercising such functions or 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 regulation (1) of these regulations, and notwithstanding any provisions to the contrary in this Regulations, a Commodity Exchange licensed hereunder shall have the delegated authority to carry out the following specified tasks and responsibilities:-
 - (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.
 - iv) Any other responsibilities that may be delegated by the Commission

3. Determination of “fit and proper”

- (1) For the purpose of these regulations in considering whether a person is a fit and proper person the Commission shall, in addition to any other matter that it may consider relevant, have regard to –
 - (a) the financial status or solvency;
 - (b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is granted, the person will perform;
 - (c) the ability to carry on the commodity exchange business competently, honestly and fairly; and the reputation, character, financial integrity and reliability, of –
 - (i) where the person is an individual, the individual himself; or
 - (ii) where the person is a company, the company, its directors, chief executive, management and all other key personnel, and any substantial shareholder of the company.

- (2) The Commission may in addition, in considering whether a person is a fit and proper person –
- (a) have regard to whether the person –
 - (i) has contravened the provision of any law designed for the protection of investors against financial loss due to dishonesty or incompetence of, or malpractice by, persons engaged in commodity trading;
 - (ii) was a director of a market operator that has been liquidated or is under liquidation, or whose licence is under suspension or has been revoked by the Commission;
 - (iii) has taken part in any business practice that, in the opinion of the Commission, was fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business; and
 - (iv) has taken part or been associated with any other business practice as would, or has otherwise conducted himself in such manner as to, cast doubt on his competence and soundness of judgment;
 - (b) take into account any information in the possession of the Commission whether provided by the applicant or not, relating to –
 - (i) any person who is to be employed by, associated with, or who will be acting for or on behalf of, the applicant for the purposes of commodity exchange business;
 - (ii) where the applicant is a company in a group of companies –
 - (A) any other company in the same group of companies; or
 - (B) any substantial shareholder or officer of the company or any other company in the same group of companies;
 - (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements, including all corporate governance requirements under the Companies Act, 1963 (Act 179) as well as the continuing obligations under the same such as filing of annual returns, and other relevant company forms and processes; and

- (d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.
- (3) For the purpose of this regulation, “group of companies” means any two or more companies one of which is the holding company of the other or others (as the case may be).

PART TWO COMMODITY EXCHANGES

4.Establishment of a Commodity Exchange

- (1) No person shall establish or operate a commodity exchange except under and in accordance with a commodity exchange license granted by the Commission under these Regulations.
- (2) A person who contravenes subsection (1) shall be liable to pay to the Commission an administrative penalty of four thousand five hundred (4,500) penalty units

5.Licensing Of Commodity Exchanges

- (1) An application for approval as a commodity exchange shall be made to the Commission in the prescribed form.
- (2) No approval shall be granted to any person to operate a commodity exchange other than a body corporate.

5. Consideration of application for licence

- (1) In considering an application to grant or renew a commodity exchange licence under the Act, the Commission shall be satisfied that the applicant –
 - (a) is fit and proper to be licenced as a commodity exchange;
 - (b) has, and shall maintain at all times, such minimum paid-up capital (net of losses) as may be determined by the Commission from time to time;
 - (c) shall operate an orderly, informed and fair commodity exchange;
 - (d) shall manage any risks associated with its business and operations prudently;
 - (e) shall enforce compliance by its members with its rules;

- (f) has rules that make satisfactory provision for –
 - (i) an orderly, informed and fair market in commodity contracts that are traded through its facilities;
 - (ii) the proper regulation and supervision of its members;
 - (iii) the prohibition of commodity trading by its officers and employees;
 - (iv) appropriate measures for the protection of investors; and
 - (v) the prohibition of trading in commodity contracts by its officers and employees;
 - (g) has sufficient financial, human and system resources to –
 - (i) establish and operate a fair and efficient commodity exchange;
 - (ii) meet contingencies or disasters (including events such as technical complications occurring with automated systems);
 - (iii) provide adequate security arrangements;
 - (h) shall comply with such other conditions as may be required by the Commission; and
 - (i) that it would not be contrary to the public interest to licence the applicant.
- (2) A commodity exchange shall not change its substantial shareholders, or directors, chief executive or other key personnel, except with the prior written confirmation of the Commission that it has no objection to the proposed change and subject to compliance with any condition imposed by the Commission.
 - (3) Where the Commission proposes to impose a condition or proposes to object to a proposed change, the Commission shall give reasons for its decision and shall give the commodity exchange a right to be heard before a final decision is made.
 - (4) A commodity exchange shall be exclusively engaged in its commodity business except only in respect of such other matters as are ancillary or incidental thereto as may be permitted by the Commission.

5. Duties of commodity exchange

- (1) It shall be the duty of a commodity exchange to ensure—

- (a) that it is responsible for its self-regulation subject to the provisions of these regulations, its rules and to the overriding powers of the Commission;
 - (b) an orderly, fair and transparent market in commodity contracts traded on the exchange;
 - (c) adequate market information is readily available;
 - (d) that risks associated with its business and operations are managed prudently; and
 - (e) compliance with these regulations.
- (2) A commodity exchange shall operate its facilities in accordance with its rules made and approved under these Regulations.
- (3) A commodity exchange shall –
- (a) regulate the operations, standards of practice and business conduct of its members (and their employees and representatives) in accordance with the rules, procedures and practices of the commodity exchange;
 - (b) keep such records as are necessary for the proper recording of each transaction on the commodity exchange;
 - (c) preserve confidentiality with regard to all information in its possession concerning its members and their clients, except that such information may be disclosed by the commodity exchange when required in writing to do so by its clearing house or by the Commission, or if it is ordered to do so by the Court;
 - (d) publish its rules ,fees and charges;
 - (e) identify and manage conflicts of interest;
 - (f) monitor market activity;
 - (g) provide a means for the resolution of disputes between members and between members and their clients;
 - (h) ensure that only licenced warehouses and warehouse operators are used in connection with commodity exchange trading; and
 - (i) provide access to a robust mechanism for clearing and settlement.
- (4) A commodity exchange shall immediately notify the Commission if it becomes aware –
- (a) that a member is unable to comply with any rule of the commodity exchange or of any financial resources rules; or
 - (b) of a financial irregularity or other matter which in the opinion of the commodity 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 his legal obligations.

- (5) A commodity exchange shall at all times provide and maintain –
 - (a) adequate and properly equipped premises;
 - (b) competent personnel, for the conduct of its business.

6. Rules of a commodity exchange

- 1 Subject to the approval of the Commission, the holder of a commodity exchange license shall make rules for the proper and efficient regulation, operation, management and control of the commodity exchange.
- 2 The rules of a commodity exchange shall be consistent with these Regulations
- 3 Without limiting the general effect of subsection (1), the holder of a commodity exchange license shall make rules as the Commission may from time to time prescribe.
 - (1) The rules of a commodity exchange shall make provision to the satisfaction of the Commission –
 - (a) with respect to the constitution, powers and functions of the governing body of the commodity exchange;
 - (b) with respect to the appointment of directors and the proper representation of non-members and investors on that governing body;
 - (c) with respect to the qualifications for membership;
 - (d) for the exclusion from membership of persons who are not of good character and high business integrity;
 - (e) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in connection with trading in commodity contracts, or for a contravention of the rules of the commodity exchange;
 - (f) with respect to the terms and conditions under which commodity contracts may be made;
 - (g) with respect to the class or classes of commodity contracts that may be traded by members and the terms and conditions governing trading in commodity contracts by members;
 - (h) with respect to fair and properly supervised trading practices;

- (i) with respect to measures to prevent manipulation, market rigging, artificial markets and excessive speculation in its commodity exchange;
 - (j) for preventing the excessive use of credit by way of initial or maintenance of margin in respect of the purchase of commodity contracts;
 - (k) with respect to the prohibition of trading in commodity contracts by dealers and their employees and representatives, either directly or indirectly, for their own account or account of associated persons, except in accordance with the rules of the commodity exchange;
 - (l) with respect to the recording and publishing of details of trading;
 - (m) with respect to the clearing and other arrangements made, and the financial condition of –
 - (i) the commodity exchange;
 - (ii) the clearing house of the commodity exchange; and
 - (iii) the members of the commodity exchange;
 - such as to provide reasonable assurance that all obligations arising out of the trading in commodity contracts will be met;
 - (n) with respect to internal procedures to ensure the proper handling of complaints from investors and to ensure that any appropriate remedial action on those complaints is promptly taken;
 - (o) where a member appears to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts, to enable action to be taken to close out his position in relation to all unsettled market contracts to which he is a party;
 - (p) generally for the carrying on the business of the commodity exchange with due regard to the interests and protection of investors and
 - (q) any other rules as may be specified by the Commission
- (2) The rules of a commodity exchange shall apply to the representatives and other employees of its members, and the member shall be responsible to ensure their compliance with such rules.

- (3) The Commission may, by notice in writing served on a commodity exchange, require it to—
 - (a) make rules specified in the notice within the period specified;
or
 - (b) ~~to~~ amend rules referred to in the notice in the manner and within the period specified in the notice.
- (4) Where the Commission is satisfied that a commodity exchange has not complied with such a requirement within the period specified in the notice, the Commission may make or amend the rules specified in the notice instead of the commodity exchange.

11. Amendment to Rules and Regulations of a Commodity Exchange

- (1) A commodity exchange shall not amend its rules, except with the prior approval of the Commission.
- (2) A commodity 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 commodity exchange - shall apply in writing and shall submit a draft of the proposed amendment to the Commission.
- (3) The Commission shall within three months communicate its decision in writing to the commodity 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.

Where the Commission considers it necessary for the protection of the public, it may by notice in writing require a commodity 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 commodity exchange shall comply with the requirement as soon as practicable after receipt of the notice from the Commission.

7. Directives to commodity exchange

- (1) The Commission may, where it considers necessary or expedient –
 - (a) for ensuring fair and orderly commodity exchanges, or for ensuring fair, orderly and expeditious clearing and settlement of transactions in commodity contracts;
 - (b) for ensuring the integrity of, and proper management of systemic risks in, commodity exchange markets; or
 - (c) for the protection of investors,

issue a directive to a commodity exchange by notice in writing either of a general or specific nature.

- (2) Any directive issued by the Commission may relate to –
- (a) the clearing or settlement of commodity contracts and the making of adjustments of contractual obligations arising out of those commodity contracts;
 - (b) the trading or the termination of trading on or through the facilities of that commodity exchange;
 - (c) the manner in which the commodity exchange carries on its business, including the manner of reporting off-market trades by members;
 - (d) the removal from office of an executive officer in the employment of a commodity exchange;
 - (e) requiring the commodity exchange to deliver to it reports of transactions on the exchange in such form as the Commission may determine or
 - (f) any other matter that the Commission considers necessary for the effective administration of these regulations,
- and the commodity exchange shall comply with any such directive.

8. Emergency powers of the Commission

- (1) Where the Commission has reason to believe that an emergency exists, or where the Commission considers it necessary or expedient in the interest of the public or for the protection of investors, the Commission may direct, by notice in writing, a commodity exchange to take such action as it considers necessary to –
- (a) maintain or restore orderly trading in commodity contracts or any class of commodity contracts; or
 - (b) liquidate any position in respect of any commodity contract or any class of commodity contracts, including but not limited to –
 - (i) terminating trading on a commodity exchange;
 - (ii) suspending trading on a commodity exchange;
 - (iii) confining trading to liquidation of commodity contracts positions;
 - (iv) ordering the liquidation of all positions or part thereof or the reduction in such positions;
 - (v) limiting trading to a specific price range;
 - (vi) modifying trading days or hours;
 - (vii) altering conditions of delivery;

- (viii) fixing the settlement price at which positions are to be liquidated;
 - (ix) requiring any person to act in a specified manner in relation to trading in commodity contracts or any class of commodity contracts;
 - (x) requiring margins or additional margins for any commodity contracts; and
 - (xi) modifying or suspending any of the rules of a commodity exchange,
- and the commodity exchange shall comply.
- (2) Where the Commission suspends trading on a commodity exchange, the suspension shall be for a period not exceeding 3 months; provided that the Commission may, where it considers necessary, extend the suspension for one further period not exceeding 3 months at the expiry of which the Commission shall either notify the commodity exchange in writing that the suspension has expired, or proceed to revoke the commodity exchange licence, as it deems appropriate.
- (3) Where a commodity exchange fails to comply with a directive of the Commission within such time as is specified by the Commission, the Commission may –
- (a) set emergency margin levels in any commodity contracts or class of commodity contracts;
 - (b) set limits that may apply to market positions acquired in good faith prior to the date of the Commission’s directive; or
 - (c) take such other action as the Commission considers fit to maintain or restore orderly trading in any commodity contracts or class of commodity contracts, or liquidation of any position in respect of commodity contracts or class of commodity contracts.
- (4) In this regulation, “emergency” means –
- (a) an act of government affecting a commodity;
 - (b) any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity;
 - (c) a threatened or actual market manipulation or corners; or
 - (d) an impending emergency or natural disaster, whether in Ghana or elsewhere; or
 - (e) an economic or financial crisis, whether in Ghana or elsewhere, or

- (f) any other situation or practice which in the opinion of the Commission constitute an emergency.

9. Commodity contracts to be approved by Commission

- (1) No commodity exchange shall permit the trading of any commodity contract on the exchange without the prior approval of the Commission.
- (2) Notwithstanding sub-regulation (1) the Commission may grant approval for the trading of any commodity contract on a commodity exchange subject to such conditions or restrictions as the Commission may consider fit.
- (3) The Commission may, by notice in writing served on the commodity exchange, withdraw its permission given under paragraph (1) to trade a commodity contract with effect from the date specified in the notice where –
 - (a) the commodity exchange fails to comply with a condition or restriction imposed under paragraph (2); or
 - (b) the Commission considers it would be contrary to the interests of the investing public to permit trading in that commodity contract to continue.
- (4) The Commission shall not withdraw its permission under paragraph (3) without first giving the commodity exchange an opportunity of being heard.

10. Fixing of position and trading limits in commodity contracts

- (1) For the purpose of diminishing, eliminating or preventing excessive speculation in any commodity under a commodity contract, the Commission may, by notice in writing from time to time, fix such limits as it considers necessary on the amount of trading which may be done or positions which may be held by any person, generally or specifically, under a commodity contract traded on a commodity exchange.
- (2) Such limits upon positions and trading shall apply to positions held by, and trading done, by two or more persons acting pursuant to an express or implied agreement or understanding, as if the positions were held by, or the trading done by, a single person.

- (3) No person shall, directly or indirectly –
 - (a) buy or sell or agree to buy or sell a commodity contract, or any number of such contracts, on a commodity exchange, in excess of the trading limits fixed for one business day, or any other stated period set by the Commission, or by a commodity exchange without the approval of the Commission; or
 - (b) hold or control a net buy or sell position under a commodity contract traded on a commodity exchange in excess of any position limit fixed by the Commission, or by the commodity exchange without the approval of the Commission.

- (4) Nothing in this regulation shall preclude the Commission from –
 - (a) fixing different trading or position limits for different commodity contracts, different delivery months, or for different days remaining until the last day of trading in a commodity contract; or
 - (b) exempting transactions under this regulation.

11. Revocation or suspension of commodity exchange licence

- (1) The Commission may, by notice in writing served on a commodity exchange, revoke or suspend its commodity exchange licence granted under the Act with effect from the date specified in the notice if the commodity exchange –
 - (a) ceases to operate a commodity exchange that it has been licenced by the Commission to operate;
 - (b) ceases to have in place satisfactory clearing facilities for the clearing and settlement of commodity contracts traded on the commodity exchange;
 - (c) is being wound up;
 - (d) fails to comply with any requirement of these regulations;
 - (e) fails to comply with a directive of the Commission;
 - (f) fails to provide the Commission with information required by the Commission, or provides false or misleading information;
 - (g) is operating in a manner detrimental to the public interest; or
 - (h) requests the Commission to do so.

- (2) A commodity exchange shall be deemed to have ceased to operate if –
 - (a) it has ceased to operate for more than 30 days unless it has obtained the prior written approval of the Commission to do so; or

- (b) it has ceased to operate under a directive issued by the Commission under these regulations.
- (3) The Commission shall, in the notice of revocation or suspension served under paragraph (1), state –
- (a) its reasons for doing so;
 - (b) the date on which the revocation or suspension takes effect; and
 - (c) the duration of a suspension, or the event which will terminate it;
- (4) The Commission may by the notice permit the commodity exchange to continue, on or after the date on which the revocation or suspension is to take effect, to carry on such activities affected by the revocation or suspension as the Commission may specify in the notice for the purpose of –
- (a) closing down the operations of the commodity exchange;
 - (b) protecting the public interest.
- (5) Except where responding to a request for revocation, the Commission shall not revoke or suspend a commodity exchange licence without first giving the commodity exchange an opportunity of being heard.
- (6) Where the Commission revokes or suspends the licence of a commodity exchange under this regulation, it shall cause notice of that fact to be published.

12. Effect of revocation or suspension

A revocation or suspension of a licence under regulation 11 shall not operate so as to –

- (a) avoid or affect any agreement, transaction or arrangement entered into on the commodity exchange operated by the commodity exchange where the agreement, transaction or arrangement was entered into before the revocation of the licence;
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

13. Reporting by a commodity exchange

Financial Year _____

- (1) *The financial year of a licensed commodity exchange shall end on the 31st day of December each year.*
- (2) *A commodity exchange shall*

- (a) *keep proper books of accounts and records of its income and expenditure, assets and liabilities and all other transactions of the commodity exchange.*
- (b) *as soon as practicable after the end of each financial year, prepare a statement of the accounts of the commodity exchange for the financial year, including an income and expenditure account and balance sheet.*
- (c) *within [1] month after the end of each of its financial years, submit the statement of accounts prepared for the financial year to its external auditors for audit.*
- (3) *The auditors shall prepare a report on the accounts and send the report to the commodity exchange which shall forthwith after its receipt send a copy of the report and a copy of the statement of accounts to the Commission.*
- (4) *The auditors shall include in their report –*
 - (a) *a statement whether, in their opinion, the income and expenditure account for the financial year to which the report relates gives a true and fair view of the commodity exchange's surplus or deficit;*
 - (b) *a statement whether, in their opinion, the balance sheet for the financial year gives a true and fair view of the commodity exchange's financial affairs at the end of that financial year*
- (5)

40. *Submission of Daily Trading returns by a Commodity Exchange*

- (1) *A commodity exchange shall file with the Commission at the end of each trading day*
 - (a) *a report on transactions of commodities that took place on the floor of the exchange, including the price and number of commodities traded; and*
 - (b) *a statement of the transactions in commodities that have taken place outside the trading floor and reported to the commodity exchange, including the price and the number of commodities traded.*
- (2) *Submission of Quarterly returns by a Commodity Exchange*
A commodity exchange shall furnish the Commission not later than 21 days after the quarter to which the return relates. The quarterly return shall relate to;
 - (a) *purchases and sales of commodities during the preceding quarter;*
 - (b) *names of commodity members that have failed to comply with any of the continuing trading requirements of the commodity exchange;*
 - (c) *details of commodities traded; and*
 - (d) *details of commodities in which trading was suspended or cancelled during the previous quarter and the reasons for the cancellation.*

(3) *Submission of Annual returns by the Commodity Exchange*

A commodity exchange shall furnish the Commission with a report of its activities during the preceding calendar year which shall contain information on;

- (a) amendments made to the rules of the commodity exchange;*
- (b) changes in the composition of the governing body;*
- (c) any new sub-committees established or changes in membership of existing sub-committees;*
- (d) admission, re-admission, resignation or expulsion of members;*
- (e) disciplinary action taken against members;*
- (f) settlement of dispute between members;*
- (g) trade failures;*
- (h) actions taken to meet any trading emergencies;*
- (i) details of commodities in which trading was suspended or cancelled;*
and
- (j) the status of Settlement Guarantee Fund.*
- (k) status of Fidelity Fund*

(4) The report shall be submitted not later than 90 days after the end of the financial year to which it relates or within any extended period granted by the Commission.

41. *Annual report of a Commodity Exchange*

- (1) A commodity exchange shall within ninety days from the end of its financial year, submit to the Commission, an annual report which includes*
 - (a) a report on the corporate governance policy of the commodity exchange and any other information required by the Commission;*
 - (b) audited financial statements prepared in accordance with the accounting standards adopted by the Institute of Chartered Accountants (Ghana); and*
 - (c) other requirements specified by the Commission.*
 - (d) a description of the activities undertaken by the commodity exchange in the financial year;*
 - (e) the resources (including financial, technological and human resources) that the commodity exchange had available, and used, in order to ensure compliance with its obligations and, in particular, its obligation to ensure that the commodity exchange operates in a fair, orderly and transparent manner; and*

- (f) *an analysis of the extent to which the commodity exchange considers that the activities undertaken, and resources used, have resulted in full compliance with all of its obligations under these regulations, regulations and the rules of the commodity exchange.*
- (2) *A commodity exchange shall ensure that the annual report is accompanied by such other information and statements as may be specified by the Commission.*
- (1) *An annual report shall be accompanied by an audit report where required by the Commission.*
 - (a) *The Commission may, by giving written notice to a commodity exchange, require the commodity exchange to obtain an audit report (by a person to be approved by the Commission) on the annual report and on any information or*
- (2) *The financial statements to be included in an annual report under regulations 42(1), shall*
 - (a) *be audited by an audit firm approved by the Commission, and*
 - (b) *be in accordance with the auditing standards by the Institute of Chartered Accountants (Ghana).*
- (3) *Where, in the course of audit, the auditor of a commodity exchange has reason to believe that*
 - (a) *there has been a material adverse change in the risks inherent in the business of that commodity exchange with the potential to adversely affect the ability of the commodity exchange to continue as a going concern;*
 - (b) *the commodity exchange may be in contravention of Securities Industries Act, Act 929, these 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 on the matter to the Commission.*
- (4) *A report made under regulation 42 (3) does not constitute a breach of the duties of the auditor.*

14. Penalty

Any person who contravenes the provisions of Regulations ... and ... is liable to pay to the Commission an administrative penalty of five hundred penalty units and to a further administrative penalty of 20 penalty unit for each day that the default subsists and shall have its licence suspended if the default exceeds 30 days.

Add Section 197 (6)

14. Commission may appoint auditor

Where the Commission is satisfied that it is in the public interest to do so, it may appoint in writing an auditor (at the expense of the commodity exchange) to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of a commodity exchange.

**PART THREE
CLEARING HOUSES**

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. Only persons licensed under the provisions of the Warehouse Receipts Regulations, 2014, may for purpose of Exchange trading, operate Warehouse 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. The Exchange shall maintain an automated depository of Exchange- approved negotiable warehouse receipt or authorized 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 Commodity 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 Commodity 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 (2) of this section, they shall comply with provisions, inter alia, of sections 50 and 55 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.

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. (4) A person who is convicted of an offence under this Act for which no specific penalty is provided is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than three years or to both.

- (5) (5) The Commission may impose a fine of three hundred penalty units for a breach of a non-criminal nature under this Act for which a specific penalty is not provided
- (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.

16. Consideration of application for licence

- (1) In considering an application to grant [or renew] a clearing house licence under the Act, the Commission shall be satisfied by the applicant that the applicant –
 - (a) is a fit and proper to be licenced as a clearing house;
 - (b) has, and will maintain at all times, such minimum paid-up capital and non-distributable reserves as may be determined by the Commission from time to time;
 - (c) will ensure that there are orderly, fair and expeditious clearing arrangements for transactions in commodity contracts;
 - (d) will manage any risks associated with its business and operations prudently;
 - (e) will enforce compliance by its members with its rules;
 - (f) has rules that make satisfactory provision for –
 - (i) the proper regulation and efficient operation of the clearing facility which it operates;
 - (ii) the proper regulation and supervision of its members; and
 - (iii) the prohibition of commodity trading by its officers and employees;
 - (g) has sufficient financial, human and system resources to –

- (i) establish and operate an orderly, fair and expeditious clearing facility;
 - (ii) meet contingencies or disasters (including events such as technical complications occurring with automated systems); and
 - (iii) provide adequate security arrangements; and
 - (h) will comply with such other conditions as may be required by the Commission;
 - (i) it would not be contrary to the public interest to licence the company.
- (2) A clearing house shall not change its substantial shareholders, or directors, chief executive or other key personnel, except with the prior written confirmation of the Commission that it has no objection to the proposed change and subject to compliance with any condition imposed by the Commission.
- (3) Where the Commission proposes to impose a condition, or proposes to object to a proposed change, the Commission shall give reasons for its decision and shall give the person concerned a right to be heard before a final decision is made.
- (4) A clearing house exchange shall be exclusively engaged in its clearing business except only in respect of such other matters as are ancillary or incidental thereto as may be expressly permitted by the Commission.
- (5) [Subject to the provisions of these regulations, a clearing house licence shall be granted for a continuous period provided that the clearing house pays the prescribed annual fee on or before the anniversary of the date of the grant of its licence.]

17. Duties of clearing house

- (1) It shall be the duty of a clearing house to ensure –
- (a) that it is responsible for its self-regulation subject to the provisions of these regulations, its rules and the overriding powers of the Commission;
 - (b) that risks associated with its business and operations are managed prudently; and
 - (c) compliance with these regulations.

- (2) A clearing house shall operate its facilities in accordance with its rules made and approved under these regulations.
- (3) A clearing house shall –
 - (a) formulate and implement appropriate procedures for ensuring that its clearing members comply with its rules;
 - (b) regulate the operations, standards of practice and business conduct of its members (and their employees and representatives) in accordance with the rules, policies, procedures and practices of the clearing house;
 - (c) keep such records as are necessary for the proper recording of each transaction on the clearing house;
 - (d) publish its rules, fees and charges;
 - (e) identify and manage conflicts of interest;
 - (f) provide a means for the resolution of disputes;
 - (g) match and verify trades in a timely manner;
 - (h) arrange for secure payment and final settlement;
 - (i) provide risk management arrangements to minimise the effect of any default;
 - (j) provide monitoring facilities that can detect the build-up of positions that may threaten the system; and
 - (k) shall preserve confidentiality with regard to all information in its possession concerning its clearing members and their clients, except that such information may be disclosed by the clearing house when required in writing by the Commission or commodity exchange, or if it is ordered to do so by a court.
- (4) A clearing house shall immediately notify the Commission if it becomes aware –
 - (a) that a clearing member is unable to comply with any rule of the clearing house;
 - (b) of a financial irregularity or other matter which in the opinion of the clearing house may indicate that the financial standing or integrity of a clearing member is in question, or that a clearing member may not be able to meet its legal obligations.
- (5) A clearing house shall at all times provide and maintain –
 - (a) adequate and properly equipped premises;
 - (b) competent personnel, for the conduct of its business.

18. Rules of clearing house

- (1) The rules of a clearing house shall make provision to the satisfaction of the Commission –
 - (a) with respect to the constitution, powers and functions of the governing body of the clearing house;
 - (b) with respect to the appointment of directors;
 - (c) with respect to the qualifications for clearing membership;
 - (d) for the exclusion from membership of persons who are not of good character and high business integrity;
 - (e) for the expulsion, suspension or disqualification of members for a contravention of the rules of the clearing house;
 - (f) for the registration of commodity contracts;
 - (g) for the settlement of transactions involving commodity contracts;
 - (h) for guaranteeing to its members the performance of commodity contracts;
 - (i) providing for the novation of contracts to a central counterparty;
 - (j) for setting up a settlement guarantee fund;
 - (k) with respect to internal procedures to ensure the proper handling of complaints and to ensure that any appropriate remedial action on those complaints is promptly taken; and
 - (l) for such other matters as may be directed by the Commission.

- (2) The rules may in particular –
 - (a) distinguish between clearing members or participants that clear transactions for themselves only, and those that clear transactions for other participants;
 - (b) impose appropriate financial resources and operational capacity requirements on the different category of clearing member or participant;
 - (c) require each clearing member or participant that clears transactions for third parties to have procedures for segregating the funds, assets and positions of one client from another and from its own funds, assets or positions;
 - (d) impose appropriate risk management procedures on all participants;
 - (e) provide for the novation of contracts to a central counterparty;
 - (f) require participants to abide by decisions of the clearing house to reduce threats posed by particular exposures;
 - (g) require all participants in the clearing house to meet their obligations in full;

- (h) specify qualifications for applicants for membership and provisions for accepting applicants as trading participants, imposing conduct and other requirements on them and, where appropriate, removing trading participants from the clearing house either temporarily or permanently, provided that such provisions treat all applicants, potential applicants and participants fairly and equitably;
 - (i) provide for the governance of the conduct activity of participants, including their responsibility to act with integrity and in the interests of maintaining a proper market, paying such fees and charges as may be applicable and abiding by the rules of the clearing house;
 - (j) prohibit conduct that amounts to insider dealing, other forms of abusive trading or the creation of a false market or other forms of market abuse; and
 - (k) provide mechanisms for effectively investigating breaches of the rules and enforcing the rules.
- (3) The rules of a clearing house shall also include default provisions, to the satisfaction of the Commission, for the taking of proceedings or other action if a member has failed, or appears to be unable, or likely to become unable, to meet his obligations for all unsettled or open market contracts to which he is a party.
- (4) Where a clearing house takes default proceedings, all subsequent action taken under its rules for settlement of market contracts to which the defaulter is a party are to be treated as taken under the default rules.
- (5) The rules of a clearing house shall apply to the employees of its clearing members, and the clearing member shall be responsible to ensure their compliance with such rules.
- (6) The Commission may, by notice in writing served on a clearing house exchange, require it –
 - (a) to make rules specified in the notice within the period specified; or
 - (b) to amend rules referred to in the notice in the manner and within the period specified in the notice.
- (7) Where the Commission is satisfied that a commodity exchange has not complied with a requirement within the period specified in the notice, the Commission may make or amend the rules specified in the

notice instead of the clearing house.

19. Commission may issue directives to clearing house

Where the Commission is satisfied that it is appropriate for the protection of investors or for the proper regulation of a clearing house, the Commission may issue a directive by notice in writing to a clearing house –

- (a) for ensuring a fair and orderly commodity exchange market, or for ensuring fair, orderly and expeditious clearing and settlement of transactions in commodity contracts;
- (b) for ensuring the integrity of, and proper management of systemic risks in commodity exchange markets;
- (c) requiring the removal of a person from office with, or employment by, the clearing house;
- (d) requiring the clearing house to deliver to it reports of transactions on the clearing house in such form as it may specify; or
- (e) in respect of any other matter that the Commission considers necessary for the proper administration of these regulations, and the clearing house shall comply with any such directive.

20. Emergency powers of Commission

(1) Where the Commission has reason to believe that an emergency exists, or where the Commission considers it necessary or expedient in the interest of the public or regulation of the public or for the protection of investors, the Commission may direct by notice in writing a clearing house to take such action as it considers necessary including but not limited to –

- (a) altering conditions of delivery;
- (b) fixing the settlement price at which commodity contracts are to be liquidated;
- (c) requiring margins or additional margins for any commodity contracts; and
- (d) modifying or suspending any of the rules of the clearing house,

and the clearing house shall comply with that directive.

(2) Where a clearing house fails to comply with a directive of the Commission, within such time as is specified by the Commission, the Commission may –

- (a) set emergency margin levels in any commodity contracts or class of commodity contracts; or
- (b) take such other action, including but not limited to those specified above, as the Commission considers fit to maintain

or restore fair, orderly and expeditious clearing and settlement of transactions in commodity contracts or any class of commodity contracts.

- (3) In this regulation, “emergency” means –
- (a) any act of government affecting a commodity;
 - (b) any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity;
 - (c) a threatened or actual market manipulation or corner; or
 - (d) any other situation or practice which in the opinion of the Commission constitute an emergency.

21. Revocation of clearing house licence

- (1) The Commission may, by notice in writing served on a clearing house, revoke its clearing house licence for the reason stated in the notice with effect from the date specified in the notice if the clearing house –
- (a) ceases to operate its clearing facility ;
 - (b) is being wound up;
 - (c) fails to comply with any requirement of these regulations;
 - (d) fails to comply with a directive of the Commission;
 - (e) fails to provide the Commission with information required by the Commission, or provides false or misleading information;
 - (f) is operating in a manner detrimental to the public interest; or
 - (g) requests the Commission to do so.
- (2) A clearing house shall be deemed to have ceased to operate as a clearing house if –
- (a) it has ceased to operate its clearing house facility for more than 30 days unless it has obtained the prior approval of the Commission to do so; or
 - (b) it has ceased to operate such clearing facility under a directive issued by the Commission under these regulations.
- (3) The Commission may by the notice permit the clearing house to continue, on or after the date on which the revocation is to take effect, to carry on such activities affected by the revocation as the Commission may specify in the notice for the purpose of –
- (a) closing down the operations of the clearing house;
 - (b) protecting the public interest.

- (4) Except where responding to a request for revocation, the Commission shall not revoke a clearing house licence without first giving the clearing house an opportunity of being heard.
- (5) Where the Commission revokes the licence of a clearing house under this regulation, it shall cause notice of that fact to be published in the official Gazette.

22. Effect of revocation

A revocation of licence under regulation 21 shall not operate so as to –

- (a) avoid or affect any agreement, transaction or arrangement entered into on the commodity exchange of a commodity exchange where the agreement, transaction or arrangement was entered into before the revocation of the licence; and
- (b) affect any right, obligations or liability arising under such agreement, transaction or arrangement.

23. Accounts and audit

- (1) A clearing house shall keep proper books of accounts and records of its income and expenditure, assets and liabilities and all other transactions of the clearing house.
- (2) A clearing house shall, as soon as practicable after the end of each financial year, prepare a statement of the accounts of the clearing house for the financial year, including an income and expenditure account and balance sheet.
- (3) A clearing house shall, within [1] month after the end of each of its financial years, submit the statement of accounts prepared for the financial year to its external auditors for audit.
- (4) The auditors shall prepare a report on the accounts and send the report to the clearing house which shall forthwith after its receipt send a copy of the report and a copy of the statement of accounts to the Commission.
- (5) The auditors shall include in their report –
 - (a) a statement whether, in their opinion, the income and expenditure account for the financial year to which the report relates gives a true and fair view of the clearing house's surplus or deficit;

- (b) a statement whether, in their opinion, the balance sheet for the financial year gives a true and fair view of the clearing house's financial affairs at the end of that financial year.
- (6) The auditors shall have a right of access at all reasonable times to the books, accounts, vouchers and other records of the clearing house and are entitled to require from officers of the clearing house such information and explanations as they consider necessary for the performance of their duties as auditor.

24. Commission may appoint auditor

Where the Commission is satisfied that it is in the public interest to do so, it may appoint in writing an auditor (at the expense of the clearing house) to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of a clearing house.

25. Annual report

- (1) A clearing house shall, within 3 months after the end of its financial year, give to the Commission an annual report that includes –
 - (d) a description of the activities undertaken by the clearing house in the financial year;
 - (e) the resources (including financial, technological and human resources) that the clearing house had available, and used, in order to ensure compliance with its obligations; and
 - (f) an analysis of the extent to which the clearing house considers that the activities undertaken, and resources used, have resulted in full compliance with all of its obligations under these regulations, regulations and the rules of the clearing house.
- (2) A clearing house shall ensure that the annual report is accompanied by such other information and statements as may be specified by the Commission.
- (3) An annual report shall be accompanied by an audit report where required by the Commission.
- (4) The Commission may, by giving written notice to the clearing house, require the clearing house to obtain an audit report (by a person to be approved by the Commission) on the annual report and on any information or statements accompanying it.

26. Proceedings of clearing house take precedence over law of insolvency

- (1) The following shall not be to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver over any of the assets of a person –
 - (a) a market contract;
 - (b) the rules of a clearing house relating to the settlement of a market contract;
 - (c) any proceedings or other action taken under the rules of a clearing house relating to the settlement of a market contract;
 - (d) a market charge;
 - (e) the default rules of a clearing house; or
 - (f) any default proceedings.
- (2) No person or court, except the Commission and the Court acting under the laws of insolvency, may exercise any power to prevent or interfere with –
 - (a) the settlement of a market contract in accordance with the rules of a clearing house; or
 - (b) any default proceedings.

**PART FOUR
COMMODITY DEALERS, TRADING ADVISERS AND
REPRESENTATIVES**

27. Licensing requirement

- (1) A person, shall not carry on commodity exchange business as a commodity broker-dealer, or hold himself out as carrying on such a business, except under and in accordance with a commodity broker-dealer's licence granted by the Commission under the Act.
- (2) A person shall not carry on commodity exchange business as a commodity trading adviser, or hold himself out as carrying on such a business, except under and in accordance with a commodity trading adviser's licence granted by the Commission under the Act.
- (3) A person shall not act as, or hold himself out as, a representative of a commodity dealer except under and in accordance with a commodity dealer's representative's licence granted by the Commission under the Act.

- (4) A person shall not act as, or hold himself out as, a representative of a commodity trading adviser except under and in accordance with a commodity trading adviser's representative's licence granted by the Commission under the Act.
- (5) A commodity broker-dealer's licence may be granted only to a company.
- (6) A commodity trading adviser's licence may be granted to an individual or to a company.
- (7) A representative's licence may be granted only to an individual.
- (8) A representative shall not be licensed unless he is accredited to a named principal.
- (9) A company which is licensed under the Act as a commodity dealer or commodity trading adviser shall at all times employ at least two one individuals who are licenced as a representative under the Act.
- (10) A company that is licensed under the Act as a commodity dealer or commodity trading adviser shall be exclusively engaged in that commodity exchange business except only in respect of such other matters as are ancillary or incidental to its commodity exchange business or otherwise as may be expressly permitted by the Commission.
- (11) In the case of a bank, a commodity dealer's licence shall be granted only to a subsidiary incorporated by the bank for such purpose.

28. Accreditation of representatives

- (1) A representative is accredited to a named principal for the purpose of these regulations only if the licence of the representative states that he is accredited to the named principal.
- (2) The Commission shall not issue a representative's licence unless both the representative and the principal have notified the Commission in writing that he is, or is to be, accredited.
- (3) Where the accreditation of the representative has been terminated (whether by the principal or the representative) –

- (a) the market operator and the holder of the license shall notify the Commission in writing of such termination and surrender the license within fourteen days;
- (b) the Commission shall amend its register of market operators accordingly.

29. Consideration of application for licence

- (1) In considering an application to grant or renew a market operators licence under the Act, the Commission shall be satisfied by the applicant that the applicant –
 - (a) is a fit and proper person to be licensed;
 - (b) has, and shall maintain at all times, such minimum paid-up capital as may be determined by the Commission from time to time;
 - (c) shall establish adequate policies and procedures sufficient to ensure compliance by the market operator, including its managers and employees, with its obligations under these regulations as well as appropriate rules governing personal transactions by such persons;
 - (d) shall maintain and operate effective organisational and administrative requirements with a view to taking all reasonable steps to prevent conflicts of interest from adversely affecting the interests of its clients;
 - (e) shall take all reasonable steps to ensure continuity and regularity in the performance of its commodity exchange business and in particular will employ appropriate and proportionate systems, resources and procedures;
 - (f) has sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems;
 - (g) has arrangements for records to be kept of all services and transactions undertaken which shall be sufficient to enable the Commission to monitor compliance with the requirements of these regulations, and in particular to ascertain that the market operator has complied with all obligations with respect to clients and potential clients;
 - (h) where holding clients' property will make adequate arrangements to safeguard clients' ownership rights, especially in the event of its insolvency, and to prevent the use of a clients' property on own account except with the client's express consent;

- (i) where holding clients' funds, will make adequate arrangements to safeguard the client's rights and to prevent the use of clients' funds for its own account;
 - (j) where it is a company, employs at least two individuals who are licenced as a representative under the Act;
 - (k) in the case of an application other than for a representative's licence, has specified premises that are suitable for keeping records or other documents;
 - (l) in the case of an application for a representative's licence, has passed such examination and undertaken such training as may be directed by the Commission; and
 - (m) satisfies such other conditions as may be required or imposed by the Commission.
- (2) The Commission may grant or renew a licence under this Part subject to such conditions or restrictions as it considers necessary.

30. Directives to Exchange Actors

- (1) The Commission may by notice in writing give a market operator a directive under this regulation where it appears to the Commission that
- (a) it is desirable for the protection of investors; or
 - (b) the market operator is contravening, has contravened or is about to contravene, or has failed to comply with any provision of or requirement under these regulations or, in purported compliance with any such provision or requirement has furnished the Commission with information that is false, inaccurate or misleading.
- (2) A directive under this regulation may contain all or any of the following prohibitions or requirements –
- (a) require a market operator to cease and desist from the contravention;
 - (b) prohibit a market operator from entering into transactions of a class or description specified in the notice or entering into them otherwise than in circumstances so specified or to an extent so specified;
 - (c) prohibit a market operator from soliciting business from a person of a class or description so specified or from persons other than persons of such a class or description; or
 - (d) prohibit a market operator from carrying on business in a specified manner or otherwise than in a specified manner;

- (e) as regards any assets whether in Ghana or elsewhere and whether they are the assets of the market operator or not –
 - (i) prohibit the market operator from transferring, alienating or otherwise disposing of such assets or from dealing with them in a manner specified in the notice; or
 - (ii) require the market operator to deal with such assets in, and only in, a manner specified in the notice;
- ~~(f)~~ require a market operator to maintain in Ghana assets of such value as appears to the Commission to be desirable with a view to ensuring that he will be able to meet his liabilities in respect of his commodity business;
- ~~(g)~~(f)
- ~~(h)~~(g) require a market operator to transfer control of assets of a specified class or description to a trustee approved by the Commission; and
- ~~(i)~~(h) require a market operator to comply with such other matter as the Commission considers necessary for the protection of investors.

- (3) A market operator shall comply with a directive under this regulation.
- (4) A directive under this regulation shall be for such specified period as the Commission considers necessary (which period may be extended as considered necessary).
- (5) The Commission may, by written notice either of its own motion or on the application of a market operator on whom a prohibition or requirement has been imposed under this regulation, rescind or vary the prohibition or requirement if it appears to the Commission that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

PART FIVE

ACCOUNTS AND AUDIT OF EXCHANGE ACTORS

31. Accounts and records to be kept

- (1) A market operator (other than a representative) shall keep such accounting and other records as will sufficiently show and explain

the transactions (whether effected on its own behalf or on behalf of others) and financial position of its commodity exchange business and shall be such as to –

- (a) disclose with reasonable accuracy, at any time, its financial position at that time;
 - (b) enable it to prepare a true and fair profit and loss account and balance sheet as at any time; and
 - (c) demonstrate whether it is maintaining in its commodity business adequate financial resources to meet its commodity exchange business requirements and withstand the risks to which its business is subject.
- (2) Without limiting the generality of the above, such accounts and other records shall be maintained as may be directed by the Commission.
 - (3) The obligations under these regulations are continuing obligations and continuous performance of them is required so as to ensure that records are updated daily.
 - (4) Information required to be recorded by these regulations shall –
 - (a) be recorded in such a way as to enable a particular trade to be identified at any time and traced through from initiation of the order to final settlement; and
 - (b) be arranged, filed, indexed and cross-referenced so as to permit access to any particular record.
 - (5) The accounting and other records required to be maintained under this regulation shall be preserved by the market operator for a period of not less than 7 years from the date on which they are made, and shall at all reasonable times be open to inspection by the Commission or by an auditor appointed by the Commission.

32. Auditor to be appointed

- (1) No market operator (other than a representative) shall be licensed unless and until it has appointed an external auditor to perform the functions required of an auditor of a market operator under or pursuant to the provisions of these regulations.
- (2) A person shall not be qualified for appointment as the auditor of a market operator unless he is qualified and approved as an auditor of market operators by the Institute of Chartered Accountant, is approved by the Commission for such purpose and holds a valid practising certificate.

- (3) An auditor, who shall have a place of business in Ghana, shall not be eligible for appointment under these regulations if he is –
 - (a) a director, officer, employee, shareholder or partner of the market operator; or
 - (b) a partner or employee of such person.
- (4) A market operator shall, within seven days of the appointment of an auditor, notify the Commission in writing of the name and address of the auditor.
- (5) A market operator shall, within seven days, notify the Commission in writing of the removal or resignation of an auditor.

33. Audited accounts to be lodged with Commission

A market operator shall –

- (a) for the financial year beginning on the day on which he commences to carry on commodity exchange business; and
- (b) for each subsequent year, prepare financial statements made up to the last day of the financial year which shall show a true and fair view, contain the information prescribed, and shall lodge those documents with the Commission not later than [3] months after the end of the financial year, together with an auditor's report which shall express opinions on such matters as may also be prescribed.

34. Auditor to report to Commission in certain cases

If, during the performance of his duties as auditor for a market operator, an auditor –

- (a) becomes aware of any matter which in his opinion adversely affects the financial position of the market operator to a material extent; or
- (b) discovers evidence of a contravention of the provisions of these regulations relating to client assets, or as to the accounts and records to be kept,

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

35. Commission may appoint auditor

Where the Commission is satisfied that it is in the public interest to do so, it may appoint in writing an auditor (at the expense of the market operator) to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the market operator, and on money, securities or other property held on account of any other person by the market operator or by a nominee appointed by the market operator, if –

- (a) the market operator has failed to lodge an auditor's report;
- (b) the Commission has received an adverse auditor's report; or
- (c) the Commission has reason to believe that the market operator has failed to comply with the provisions of these regulations relating to client assets, or as to the accounts and records to be kept.

PART SIX

INFORMATION, INSPECTION AND INVESTIGATION

36. Commission may call for information

In addition to the provisions of sections 24 to 34 of the Act, the Commission may, by notice in writing, require a market operator to furnish it with such information as it may require for the exercise of its functions within such reasonable time and verified in such manner as it may specify.

37. Inspections

For the purpose of ascertaining whether a person who is, or at any time has been, a market operator is complying or has complied with any provision of or requirement under the Act or these regulations, or the terms and conditions of his licence, the provisions of section 36 of the Act shall apply

38. Investigations

- (1) Where the Commission has reasonable cause to believe, either on its own motion or as a result of a complaint received, that –
 - (a) an offence or other contravention has been committed under the Act, Companies Act, 1963 (Act 179) or these regulations;
 - (b) a market operator may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with his commodity business; or
 - (c) the manner in which a market operator has engaged or is engaging in his commodity business is not in the interest of the consumer or the public interest,the Commission may in writing direct one or more of its employees or one or more other persons (“the investigator”) to investigate any of these matters 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 document which contains, or which is likely to contain,

information relevant to an investigation under this regulation, 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 the time and at the place as the investigator requires in writing, any record or 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 required by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under paragraph (a);
- (c) attend before the investigator at the time and place the investigator requires in writing, and answer truthfully and to the best of his ability under oath or affirmation (which oath or affirmation the investigator is hereby empowered to administer) any question relating to the matters under investigation as the investigator may put to him; and
- (d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator.

39. Destruction of documents

A person shall not destroy, falsify, conceal or dispose of, or cause or permit the destruction, falsification, concealment or disposal of, any document, which he knows or ought to know is relevant to an inspection or an investigation under these regulations.

PART SEVEN DISCIPLINE OF EXCHANGE ACTORS

40. Disciplinary action in respect of market operators

- (1) Subject to the disciplinary procedural requirements of these regulations, where –
 - (a) a market operator is, or was at any time, guilty of misconduct;
or
 - (b) the Commission is of the opinion that a market operator is not a fit and proper person to remain a market operator,
the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case –
 - (i) revoke its licence; or

- (ii) suspend its licence for such period or until the occurrence of such event as the Commission may specify;
 - (iii) publicly or privately reprimand the market operator.

- (2) Subject to the disciplinary procedural requirements of these regulations, where a market operator is, or was at any time, guilty of misconduct, the Commission may make one or more of the orders, separately or in addition to any power exercisable under this Act or regulation, namely an order that the market operator –
 - (a) shall pay to the Commission an administrative penalty not exceeding three hundred penalty units;
 - (b) shall pay to the Commission an amount not exceeding the amount of any profit gained or loss avoided by the market operator as a result of the misconduct in question;
 - (c) with regard to an employee or agent of a market operator –
 - (i) require the market operator to take action against the employee or agent;
 - (ii) disqualify the employee or agent from employment in any capacity by any market operator;
 - (iii) recover from the employee or agent an amount double the amount accruing to him from his misconduct;
 - (d) shall pay to the Commission a sum appropriate to reimburse the Commission for the costs and expenses that it has reasonably incurred in relation or incidental to the investigation of its conduct.

- (3) A market operator ordered to pay an administrative penalty shall pay the penalty to the Commission within seven days, or such further period as the Commission may specify by notice, after the order has taken effect.

- (4) In this regulation “misconduct” means –
 - (a) a contravention of any of the provisions of the Act or these regulations;
 - (b) a contravention of any of the terms or conditions of a licence granted under the Act;
 - (c) failure to comply with a directive of the Commission; or
 - (d) an act or omission by a market operator in relation to his commodity exchange business which, in the opinion of the Commission, is or is likely to be prejudicial to the public interest,
 and “guilty of misconduct” shall be construed accordingly.

41. Other circumstances for disciplinary action in respect of market operators

(1) Subject to the disciplinary procedural requirements of these regulations, the Commission may revoke the licence of a market operator, or suspend such licence for such period or until the occurrence of such event as the Commission may specify, where the exchange actor is

- (a) is an individual, he –
 - (i) is shown by certified medical evidence to have become mentally or physically incapable of performing the activities to which the licence relates;
 - (ii) has been adjudged a bankrupt, in Ghana or elsewhere;
 - (iii) is convicted, whether in Ghana or elsewhere, of fraud or other offences involving dishonesty;
 - (iv) is in breach of these regulations;
 - (v) contravenes or fails to comply with any condition applicable in respect of his licence;
 - (vi) fails to comply with a directive of the Commission;
 - (vii) fails to provide the Commission with information required, or provides false or misleading information;
 - (viii) ceases to carry on the commodity exchange business for which he is licenced;
 - (ix) is the holder of a representative's licence and the licence of the principal to whom he is accredited is revoked or suspended; or
 - (x) by reason of any other circumstances, is no longer a fit and proper person to hold a licence;
- (b) a company –
 - (i) the company goes into liquidation or is ordered to be wound up;
 - (ii) a receiver or manager of all or a substantial part of the property of the company is appointed;
 - (iii) the company ceases to carry on the commodity exchange business for which it is licenced;
 - (iv) the Commission has reason to believe that the company, or any of its directors or employees, has not performed his duties honestly and fairly;
 - (v) the company contravenes or fails to comply with any condition applicable in respect of the licence;
 - (vi) the company does not continue to employ at least two persons who hold representative's licences granted under these regulations;

- (vii) the company is in breach of the Act or of these regulations;
 - (viii) fails to comply with a directive of the Commission;
 - (ix) fails to provide the Commission with information required, or provides false or misleading information; or
 - (x) by reason of any other circumstances, the company is no longer a fit and proper person to hold a licence.
- (2) Where the Commission suspends a licence under this Part, the suspension shall be for a specific period.
- (3) For the purposes of this regulation a market operator shall be deemed to have ceased to carry on the commodity exchange business for which he is licenced if –
- (a) he has ceased to carry on that business for more than 30 days unless he has obtained the prior approval of the Commission to do so; or
 - (b) he has ceased to carry on that business under a directive issued by the Commission.
- (4) Where the Commission suspends or revokes the licence of a market operator under this Part, it shall cause notice of that fact to be published in the official Gazette.

42. Effect of revocation or suspension

- (1) The revocation or suspension of a licence under this Part does not operate so as to –
- (a) avoid or affect an agreement, transaction or arrangement entered into by the market operator on a commodity exchange where the agreement, transaction or arrangement was entered into before the revocation or suspension; and
 - (b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.
- (2) Where a licence is revoked or suspended under this Part, the Commission may by notice in writing –
- (a) require the market operator to transfer to, or to the order of, his client such records relating to client property or to the affairs of

- the client held at any time for the client, in such manner, as the Commission may specify in the notice; or
- (b) permit the market operator to –
 - (i) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation; or
 - (ii) in the case of a suspension, carry on only essential business operations for the protection of interests of clients during the period of suspension,subject to such conditions as the Commission may specify in the notice.

43. Procedural requirements for exercise of disciplinary powers under this Part

- (1) The Commission shall not exercise any power under this Part without first giving the market operator in respect of whom the power is to be exercised a reasonable opportunity of being heard.
- (2) The Commission may prescribe the manner in which the market operator shall be given an opportunity to be heard.
- (3) Where the Commission decides to exercise any power under this Part, the Commission shall inform the market operator in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice shall include –
 - (a) a statement of the reasons for which the decision is made;
 - (b) the time at which the decision is to take effect;
 - (c) the duration and terms of any revocation or suspension to be imposed under the decision;
 - (d) the terms in which the market operator is to be reprimanded under the decision;
 - (e) the amount of any pecuniary penalty to be imposed under the decision and the period (being specified as a period after the decision has taken effect) within which it is required to be paid.

**PART EIGHT
MARKET ABUSE**

Type here the provisions of Sections 147-155 with necessary modifications such as reference to commodity exchange instead of stock exchange

45. False trading

- (1) A person shall not create or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in a commodity contract on a commodity exchange, or a false or misleading appearance with respect to the market for, or the price of, commodity contracts on a commodity exchange.
- (2) Without limiting the general nature of what constitutes a false or misleading appearance of active trading, a false or misleading appearance of active trading in a commodity contract is created for the purpose of this regulation if a person executes, or holds himself out as having executed, an order for the purchase or sale of a commodity contract on a commodity exchange, without having effected a bona fide purchase or sale of the commodity contract in accordance with the rules and practices of the commodity exchange.

46. Bucketing

No person shall execute, or hold himself out as having executed, an order for the purchase or sale of a commodity contract on a commodity exchange, without having effected a bona fide purchase or sale of the commodity contract in accordance with the rules and practices of the commodity exchange.

47. Manipulation of price of a commodity contract and cornering

No person shall, directly or indirectly –

- (a) manipulate or attempt to manipulate the price of a commodity contract that may be dealt in on a commodity exchange, or of any commodity which is the subject of such commodity contract; or
- (b) corner, or attempt to corner, any commodity which is the subject of a commodity contract.

48. Employment of fraudulent or deceptive devices, etc.

No person shall, directly or indirectly, in connection with any transaction with any other person involving trading in a commodity contract –

- (a) employ any device, scheme or artifice to defraud that other person;
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person;
- (c) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

49. Fraudulently inducing trading in commodity contracts

No person shall, directly or indirectly, induce or attempt to induce another person to trade in a commodity contract –

- (a) by making or publishing any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false, misleading or deceptive with respect to any material fact, and which he knows or ought reasonably to have known, is false, misleading or deceptive;
- (b) by making or publishing any statement , promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which he knows or ought reasonably to have known, is false, misleading or deceptive, by reason of omission of that fact; or
- (c) by recording or storing in, or by means of, any mechanical, electronic or other device information that is false or misleading in a material particular.

50. Liability to pay damages

- (1) A person who is convicted of an offence under this Part 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 a commodity contract at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss incurred.
- (2) Nothing in this regulation limits or diminishes any civil liability that any person may incur under any other law.

**PART NINE
MISCELLANEOUS**

51. Penalties

- (1) The Commission may impose an administrative penalty of three hundred penalty unit for a breach of a non-criminal nature under these regulations for which a specific penalty is not provided.