



THE FUTURES MARKET ACT, 2016



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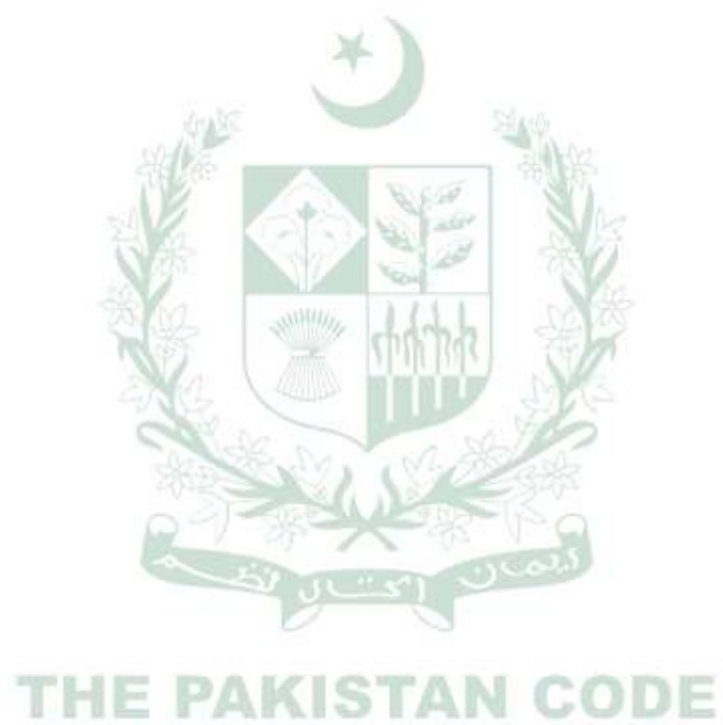
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THE FUTURES MARKET ACT, 2016

[9th April, 2016]

ACT NO. XIV OF 2016

An Act to provide for the regulation of futures market

WHEREAS it is expedient to enact a Law to provide for the regulation of futures market and matters connected therewith and incidental thereto;

It is hereby enacted as follows:—

PART I

PRELIMINARY

1. Short title, commencement and extent.— (1) This Act may be called the Futures Market Act, 2016.

(2) It shall come into force on such date as the Federal Government may appoint by notification in the official Gazette and different dates may be appointed for coming into force of different provisions thereof.

(3) It shall extend to the whole of Pakistan.

2. Definition.— In this Act, unless there is anything repugnant in the subject or context,—

(1) “accredited” means as accredited in accordance with section 50;

(2) “associate” in relation to—

(a) “an individual”, means—

(i) that individual's spouse, son, adopted son, step-son, daughter, adopted daughter, step- daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

(ii) any company of which that individual is a director;

(iii) any company in which that individual, or any of the persons mentioned in paragraph (i), has control of twenty per cent or more of the voting power in that company, whether such control is exercised individually or jointly; and

(iv) any employee of that individual; or

(b) “a company”, means another company in which the first mentioned company has control of not less than twenty per cent of the voting power in that company, and a reference in this Act to an associated person or associated company shall be construed accordingly;

(3) “auditor” shall have the same meaning as assigned to the word under the Chartered Accountants Ordinance, 1961 (X of 1961), to be appointed from the panel of auditors approved by the Commission to perform the functions assigned to auditors under this Act;

(4) “bank” means a bank licensed under section 27 of the Banking Companies Ordinance, 1962 (LVII of 1962);

(5) “clearing facility” means a facility for the clearing and settlement of futures contracts traded on a futures exchange;

(6) “clearing house” means a company that is licensed by the Commission as a clearing house under section 24;

(7) “clearing member” means a person who, is admitted as clearing member for clearing and settlement on his own behalf as well as on behalf of others under the regulations of a clearing house;

(8) “Commission” shall have the same meaning as assigned to it under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(9) “Commissioner” shall have the same meaning as assigned to it under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(10) “commodity” in relation to a futures contract, means—

- (a) agricultural, livestock, fishery, forestry, mining or energy goods and any product that is manufactured or processed from any such goods; and
- (b) any other goods or products which as such may be notified by the Commission in the official Gazette;

(11) “company” shall have the same meaning as assigned to it under the Companies Ordinance, 1984 (XLVII of 1984);

Explanation.—The expression “company” used in this Act, shall, wherever the context requires, also include a body corporate or corporation established by any special enactment for the time being in force;

(12) “control” includes the right to appoint majority of directors or to control management or policy decisions, exercisable by a person individually or through any person acting in concert, directly or indirectly, whether by virtue of his shareholding, management right, shareholders agreement, voting agreement or otherwise;

(13) “Court” means company Bench of High Court concerned as provided in sections 7 and 8 of the Companies Ordinance, 1984 (XLVII of 1984);

(14) “customer” means a person on whose behalf a regulated person carries on any regulated activity and includes any person commonly known as an investor;

(15) “customer assets” means money received, receivable or retained by, or any other property deposited with, a regulated person in the course of his business for which he is liable to account to his customer, and any money or other property accruing therefrom;

(16) “customer money” means money of any currency that, in the course of carrying on his regulated activity, a regulated person holds or receives on behalf of a customer, or which he owes to a customer;

(17) “default proceedings” means proceedings or other action taken by a clearing house or futures exchange under its default regulations;

(18) “default regulations” means those regulations which provide for the initiation of proceedings or other action if a clearing 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;

(19) “director” in relation to a company, includes any person occupying in relation to the position of a director by whatever name called;

(20) “derivative contract” means any of the following,—

- (a) forward contract;
- (b) an option contract;
- (c) a swap contract;
- (d) any other class of contract as prescribed by the Commission;

(21) “family” means a spouse and lineal ascendants and descendants;

(22) “financial instrument” includes any currency, currency index, interest rate, interest rate instrument, interest rate index, commodity index bond index and such other financial instruments as may be notified by the Commission in the official Gazette;

(23) “futures adviser” means a person, who—

- (a) gives investment advice on whether, which, the time at which or the terms or conditions of which, futures contracts are to be entered into; or
- (b) issues analysis or reports, for the purposes of facilitating the recipients of the analysis or reports to make decisions on whether, which, the time at which, or the terms or conditions on which, futures contracts are to be entered into,

but does not include—

- (A) a person who gives such advice or issues such analysis or reports, including—
 - (i) in a newspaper, magazine, book or other publication which is made generally available to the public, and which does not have as its principal or only object the provision of advice or the issue of analysis or reports, concerning securities; or

- (ii) in television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise; and

(B) any other person excluded to such extent as may be notified by the Commission;

(24) “futures broker” means a person who, by way of 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 purchase or sale of a futures contract; or
- (b) solicits or accepts any order for, or otherwise dealing in, or effects transactions in a futures contract for its customer or on its own account;

(25) “futures contract” means—

- (i) an arrangement where one party agrees to enter into a contract to deliver a specified quantity of a specified commodity or securities or financial instruments, to another party at a specified future time and at a specified price payable at that time; or
- (ii) where the parties agree to discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity or securities or financial instruments agreed at the time of the making of the contract and at a specified future time; or
- (iii) such other futures contract or class of futures contracts or derivative contracts as prescribed by the Commission, and includes options on contracts of the kind described in paragraph (i), (ii) or (iii);

(26) “futures exchange” means a public company that is licensed by the Commission as a futures exchange under section 5;

(27) “futures market” means any market, or place at which, or any service or facility, whether electronic or otherwise, by means of which, offers, promises or invitations to sell, purchase or exchange futures contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts;

(28) “holding company” shall have the same meaning as assigned to them in section 3 of the Companies Ordinance, 1984 (XLVII of 1984);

(29) “licensed person” means any person or entity licensed under this Act and includes a regulated person;

(30) “majority shareholder” means shareholder who holds, owns or control, directly or indirectly, more than fifty per cent of the shares having voting rights in a company or who, for other reasons, has domination or control of the company and includes group of shareholders who collectively own more than fifty per cent of shares or otherwise have that domination or control;

(31) “margin” means the amount of cash, approved securities or any other form of margin as prescribed;

(32) “market contract” means—

- (a) a contract subject to the regulations of a clearing house entered into by the clearing house with a clearing member under a novation and for the purpose of the clearing and settlement of transactions using the clearing facility 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 regulations of a clearing house, whether or not a novation referred to in sub-clause (a) has taken place;

(33) “money” includes any form of money, whether represented by a cheque or other payable order, or otherwise;

(34) “prescribed” means prescribed by regulations made by the Commission;

(35) “principal” in relation to a representative, means the regulated person which the representative represents;

(36) “private company” shall have the same meaning as assigned to them in clause (28) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984);

(37) “public company” shall have the same meaning as assigned to them in clause (30) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984);

(38) “quotation and trade reporting system” means the operation of facilities that permit the dissemination of price quotations for the purchase and sale of futures contracts and reports of completed transactions in futures contracts but does not include a futures exchange or a futures broker;

(39) “record” means all documentary, electronic and digital materials created, generated, sent, communicated, received, or stored, regardless of physical form or characteristics;

(40) “regulated activity” means any activity, required to be licensed, under section 46;

(41) “regulated person” means a person or entity licensed by the Commission under Part IV of this Act to carry on any regulated activity;

(42) “regulations” means the regulations made by the Commission under this Act;

(43) “representative” means an individual, by whatever name called, in the employment of or acting for or by arrangement with, a regulated person, who carries out for that regulated person any such activity (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; and includes any officer of a company who performs for the company any such activity whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise and includes an agent of a regulated person;

(44) “rules” means rules made under this Act;

(45) “securities” for the purposes of this Act, means—

- (a) in the case of listed instruments, includes shares and stock of a company (shares);
- (b) any instrument creating or acknowledging indebtedness which is issued or proposed to be issued by a company including, in particular, debentures, debenture stock, loan stock, bonds, notes, commercial paper, sukuk or any other debt securities of a company, whether constituting a charge on the assets of the company or not (debt securities);
- (c) loan stock, bonds, sukuk and other instruments creating or acknowledging indebtedness by or on behalf of a government, central bank or public authority (Government and public debt securities);
- (d) modaraba certificates, participation term certificates and term finance certificates;
- (e) any right (whether conferred by warrant or otherwise) to subscribe for shares or debt securities (warrants);
- (f) units in a collective investment scheme, including units in or securities of a trust fund (whether open-ended or closed end);
- (g) share or stock index;
- (h) any other instrument notified by the Commission to be securities for the purposes of this Act, but does not include —
 - (A) futures contracts;
 - (B) bills of exchange;
 - (C) promissory notes; and
 - (D) certificates of deposit;

(46) “securities broker” means a broker licensed by the Commission;

(47) “senior management officers” includes, chief executive officer/managing director, deputy managing director/chief operating officer and chief regulatory officer or holder of such positions by whatever name called and any other officer holding such position as prescribed by the Commission;

(48) “securities exchange” means a company licensed by the Commission as a securities exchange;

(49) “subsidiary” shall have the same meaning as assigned to it in the Companies Ordinance, 1984 (XLVII of 1984);

(50) “substantial shareholder”, in relation to a company, means a person who has an interest in shares in the company—

- (a) the nominal value of which is equal to or more than ten per cent of the issued share capital of the company; or
- (b) which enables the person to exercise or control the exercise of ten per cent or more of the voting power at a general meeting of the company;

(51) “trading in futures 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 purchase or sale of a futures contract; or
- (b) soliciting or accepting any order for, or otherwise dealing in a futures contract for its customer or on its own account;

(52) “trading right entitlement certificate” or “TRE certificate” means a trading right entitlement certificate issued by the futures exchange in accordance with its regulations; and

(53) “trading right entitlement certificate holder” or “TRE certificate holder” means a company to which a trading right entitlement certificate has been issued.

PART II

FUTURES EXCHANGES

3. Licensing requirement.— (1) No person shall establish or operate or assist in establishing or operating or hold himself out as operating a futures market except under and in accordance with a futures exchange licence granted by the Commission under section 5.

(2) The Commission shall determine the number and places for the establishment of futures exchanges.

4. Eligibility for licensing.— (1) Subject to sub-section (2), a public company having an object to operate as a futures exchange shall be eligible for licensing as a futures exchange only, if—

- (a) it has, and maintains at all times, a minimum paid-up capital (net of losses) of five hundred million rupees or such higher amount as may be notified by the Commission:

Provided that a commodity exchange registered as under Securities and Exchange Ordinance' 1969 (XLII of 1969), before the commencement of this Act, shall be required to comply with this requirement within such period as may be notified by the Commission:

Provided further that if the public company referred to in sub-section (1) is a securities exchange the requirement referred to in clause (a) shall be in

addition to any other minimum paid up capital required for a securities exchange.

- (b) not more than such percentage of shares of the company as may be notified by the Commission is held directly or indirectly by—
 - (i) a securities broker or any connected person or the majority shareholder of such securities broker, or an associate of the majority shareholder of such securities broker;
 - (ii) securities exchange or any connected person or the majority shareholder of such securities exchange, or an associate of the majority shareholder of such securities exchange;
 - (iii) a futures broker or any connected person or the majority shareholder of such futures broker, or an associate of the majority shareholder of such futures broker; or
 - (iv) a futures exchange and or any connected person or the majority shareholder of such futures exchange, or an associate of the majority shareholder of such futures exchange:

Provided that the Commission may notify, in the official Gazette, any class or classes of persons to hold such number of shares of the futures exchange as the Commission deems appropriate;

- (c) its promoters, directors, majority shareholders and senior management officers fulfil the fit and proper criteria as may be prescribed; and
- (d) it satisfies such other conditions as may be prescribed by the Commission.

(2) For the purposes of clause (b) of sub-section (1), two or more companies are connected companies if one of them is—

- (a) the holding company of the other;
- (b) a subsidiary of the other; or
- (c) a subsidiary of the holding company of the other.

5. Grant of licence.— (1) A public company eligible for a licence may apply to the Commission to be licensed as a futures exchange in such form and manner as may be prescribed.

(2) The application under sub-section (1) shall be accompanied by prescribed fee.

(3) The Commission may require an applicant to provide to the Commission such further information, as it considers necessary in relation to the application, in such form or verified in such manner as the Commission may direct.

(4) The Commission may, in writing, subject to such conditions or restrictions as it may consider fit to impose, grant licence to a public company as a futures exchange if the Commission is satisfied that the company shall operate a fair, efficient and transparent futures market, manage any risks associated with its business and operations prudently and enforce compliance by TRE certificate holders with its regulations:

Provided that a futures exchange shall only offer for trade futures contracts based on commodities and financial instruments.

(5) Where a licence is granted under this section to a securities exchange for operating a futures market, such licence shall be for offering for trade of futures contracts based on securities:

Provided that such futures exchange may also offer futures contract based on financial instruments to the extent and manner as may be notified by the Commission.

(6) In the exercise of its powers to grant licence under sub-section (4), the Commission shall have regard to, whether—

- (a) the company in its regulations shall make satisfactory provision for—
 - (i) a fair, efficient and transparent market in futures contracts that are traded on its futures market;
 - (ii) the proper regulation and supervision of TRE certificate holder;
 - (iii) appropriate measures to protect the interest of customer;
 - (iv) an equitable allocation of the dues, fees and other charges levied by company;
 - (v) the trading in futures contracts by its officers and employees; and
 - (vi) any other matters as may be prescribed;
- (b) the company possesses sufficient financial, human and system resources to,—
 - (i) establish and operate a fair, efficient and transparent futures market;
 - (ii) meet contingencies or disasters (including events such as technical complications occurring with automated systems);
 - (iii) provide adequate security arrangements; and
 - (iv) for any other matters as may be prescribed;
- (c) the company has made arrangements with respect to the appointment, removal from office and functions of the persons responsible for making or enforcing the regulations of futures exchange, in such manner, to secure a proper balance—

- (i) among the interests of TRE certificate holders of the company; or
- (ii) among the interests of the company or TRE certificate holders and the public interest:

Provided that the arrangements shall not be regarded as satisfying these requirements unless the persons responsible for such matters include a number of persons independent of the company, TRE certificate holders and other regulated persons, in order to ensure sufficient balance referred to in sub-clause (ii);

- (d) it would not be contrary to the public interest to licence the company; and
- (e) any other matters as may be prescribed.

(7) Subject to the provisions of this Act, a futures exchange licence shall be granted subject to such annual renewal fee as may be prescribed.

6. Duties of futures exchange.— (1) It shall be duty of a futures exchange to ensure—

- (a) a fair, efficient and transparent market in futures contracts that are traded on its futures market; and
 - (b) that risks associated with its business and operations are managed prudently.
- (2) In discharging its duty under sub-section (1), a futures exchange shall—
- (a) act in interest of the public; and
 - (b) ensure that interest of the investor, customer and the public at large prevails where it conflicts with the interest of the futures exchange, TRE certificate holders, shareholders, board of directors and management.

(3) A futures exchange shall operate its facilities in accordance with the provisions of this Act and rules and regulations made thereunder.

(4) A futures exchange shall regulate the operations, standards of practice and business conduct of TRE certificate holders (and their representatives and other employees) in accordance with the regulations, policies, procedures and practices of the futures exchange.

(5) A futures exchange shall formulate and implement appropriate procedures for ensuring that TRE certificate holder (and their representatives and other employees) comply with the provisions of this Act and rules and regulations made thereunder.

(6) A futures exchange shall preserve confidentiality with regard to all information in its possession concerning TRE certificate holder and their customers, except that such information may be disclosed by the futures exchange when required in writing to do so by the Commission or the clearing house under its regulations or if required under any law for the time being in force or if it is ordered to do so by the Court.

(7) A futures exchange shall have efficient procedures and arrangements for addressing customer's complaints.

(8) A futures exchange shall put in place such structural provisions, operating procedures, and surveillance techniques to detect and prevent insider trading and market abuse.

(9) A futures exchange shall immediately notify to the Commission if it becomes aware

- (a) of a financial irregularity or other matter which in opinion of the futures exchange may indicate that its financial integrity is in question or that it is unable to meet its legal obligations;
- (b) that any TRE certificate holder is unable to comply with any regulation of the futures exchange or any financial resources regulation;
- (c) of a financial irregularity or other matter which in the opinion of the futures exchange may indicate that the financial standing or integrity of a TRE certificate holder is in question or that a TRE certificate holder may not be able to meet its legal obligations; or
- (d) of any insider trading or market abuse.

(10) A futures exchange shall immediately notify to the Commission any action against a TRE certificate holder.

(11) A futures exchange shall, for the conduct of its business, at all times provide and maintain—

- (a) adequate and properly equipped premises;
- (b) automated systems with adequate capacity, facilities to meet contingencies or emergencies, physical, virtual and logical security arrangements and technical support; and
- (c) comprehensive business continuity plan.

(12) A futures exchange shall ensure that appointment or removal of chief executive officer and chief regulatory officer, by whatever name called, is made with prior approval of the Commission.

7. Regulations of futures exchange.— (1) Without limiting the generality of section 5, the regulations of a futures exchange shall make provision to the satisfaction of the Commission—

- (i) with respect to the constitution, powers and functions of the governing body of the futures exchange and matters relating to disciplining of the directors, officers and functionaries of the futures exchange;
- (ii) with respect to the development of risk management system, including control measures and safeguards with respect to large exposures and matters connected therewith;

- (iii) with respect to the risk management procedures, misalignment of incentives and conflict of interest between futures broker, its employees and its clients;
- (iv) with respect to disclosure of conflict of interest by directors and employees of the futures exchanges;
- (v) with respect to the eligibility, admittance and conduct of TRE certificate holder;
- (vi) with respect to the appointment and functioning of internal auditors;
- (vii) for the expulsion, suspension or disciplining of TRE certificate holder for conduct inconsistent with just and equitable principles in connection with trading in futures contracts, or for a contravention of the regulations of the futures exchange;
- (viii) with respect to liquidation of the assets of futures brokers deposited with or in control of the futures exchange to fulfil customer claims arising therefrom;
- (ix) with respect to the terms, conditions and specifications of futures contracts;
- (x) with respect to the class or classes of futures contracts that may be traded by futures broker and the terms and conditions governing trading in futures contracts;
- (xi) with respect to operational, information system and regulatory audit of futures broker and futures exchange including the regular assessment of trading systems as well as the assessment of reliability and effectiveness of all risk management and control measures implemented by futures exchange;
- (xii) with respect to the mechanism for inspection and provisions relating to audit and compliance of futures' brokers including cooperation with other licensed entities for violation of any requirement of this Act or any rules or regulations made thereunder;
- (xiii) with respect to proprietary trading by futures broker;
- (xiv) with respect to effective surveillance and monitoring techniques to detect and prevent insider trading and market abuse practices;
- (xv) with respect to fair and properly supervised trading practices;
- (xvi) with respect to the prohibition of trading in futures contract by futures brokers or their representatives, either directly or indirectly, for their own accounts or accounts of associated persons, except in accordance with the regulations of the futures exchange;
- (xvii) with respect to measures to prevent manipulation, market rigging and artificial markets in its futures market;

- (xviii) with respect to effective know your customer and customer due diligence policies and procedures and other matters ancillary to anti-money laundering;
- (xix) with respect to the recording and publishing of details of trading;
- (xx) with respect to financial integrity of futures broker such as to provide reasonable assurance that all obligations out of the trading in futures contract on the futures market of that futures exchange will be met;
- (xxi) with respect to the fee and charges payable for facilities and services provided by the futures exchange;
- (xxii) with respect to brokerage and other charges by futures brokers;
- (xxiii) with respect to the equitable allocation of the dues, fees and other charges levied by the futures exchange;
- (xxiv) with respect to settlement of claims and dispute resolution between any of its futures brokers, or between futures brokers and their customers, or between futures' brokers and their accredited representatives or between accredited representative of futures brokers and their customers, in relation to any market contract of the futures exchange;
- (xxv) where a futures broker 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 including facilitation in default proceedings;
- (xxvi) generally for carrying on the business of the futures exchange with due regard to the interests and protection of the investing public;
- (xxvii) with respect to TRE holder financial responsibility whether by way of minimum capital or a ratio between net capital or aggregate indebtedness, or both;
- (xviii) the processing and determination of investor complaints;
- (xxix) with respect to the clearing and other arrangements made, and the financial condition of—
 - (a) the futures exchange;
 - (b) the clearing house of the futures exchange; and
 - (c) the futures brokers of the futures exchange;

such as to provide reasonable assurance that all obligations arising out of the trading in futures contracts on the futures market of that futures exchange will be met;

(xxx) with respect to classification of TRE holder into different categories and conditions attached thereto.

(2) The regulations of a futures exchange shall apply to—

- (a) futures exchange, its employees and its directors and the futures exchange shall be responsible to ensure their compliance with such regulations; and
- (b) futures broker, the representatives and other employees of futures broker and the futures broker shall be responsible to ensure their compliance with such regulations.

(3) The power to make regulations conferred by this section on the futures exchange shall be subject to the condition of previous placement of the said regulations on the website of the futures exchange along with the rationale for eliciting public opinion thereon within a period of not less than seven days starting from the date of its placement on the website:

Provided that, on an application by the futures exchange, the Commission may waive the condition of eliciting public opinion in cases requiring immediate implementation of proposed regulation.

(4) The Commission may, by notice in writing served on a futures exchange, require it—

- (a) to make regulations specified in the notice within the period specified; or
- (b) to amend regulations referred to in the notice in the manner and within the period specified in the notice.

(5) Where the Commission is satisfied that a futures exchange has not complied with a requirement referred to in sub-section (4) within the period specified in the notice, the Commission may make or amend the regulations specified in the notice instead of the futures exchange and the regulations so made or amended shall be deemed to have been made or amended by the futures exchange and shall have effect accordingly.

8. Approval of regulations or amendments to regulations of futures exchange.— (1) No regulation of a futures exchange or any amendment (whether by way of rescission, substitution, alteration or addition) to a regulation shall have effect unless it has the approval in writing of the Commission.

(2) A futures exchange shall submit or cause to be submitted to the Commission for its approval such regulations and every amendment thereto that require approval under sub-section (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them.

(3) The Commission shall, by notice in writing served on the futures exchange, give its approval or refuse to give its approval to such regulations or amendment of the regulations, as the case may be, or any part thereof.

(4) The Commission may give its approval under sub-section (3), subject to requirements that shall be satisfied before the regulations or amendment of the regulations or any part thereof take effect.

(5) Subject to the approval of the Commission under sub-section (3), all regulations or amendments to the regulations made by the futures exchange shall be notified in the official Gazette and shall take effect from such date as may be specified in the notification.

9. Statutory obligation of futures broker to comply with regulations of futures exchange. Futures broker of a futures exchange shall comply with the regulations of that futures exchange.

10. Futures exchange to assist the Commission. A futures exchange shall provide such assistance to the Commission as the Commission may require for the performance of functions and duties of the Commission, including the furnishing of such returns and the provision of such books and other information relating to the business of the futures exchange or in respect of trading in futures contracts or any other specified information as the Commission may require for the proper administration of this Act.

11. Review of disciplinary action taken by futures exchange.—(1) Where a futures exchange reprimands, imposes penalty, suspends, cancels TRE certificate or otherwise takes disciplinary action against a futures broker in accordance with its regulations, the futures exchange shall immediately inform the Commission in writing of the name of the futures broker, the reason for and nature of the action taken, the amount of any sum imposed by way of penalty and the period of any suspension.

(2) The futures exchange shall grant an opportunity of being heard to futures broker before it imposes a penalty, reprimands, suspends, cancels TRE certificate or otherwise takes disciplinary action against the futures broker:

Provided that where the futures exchange is satisfied that delay in the suspension of its futures broker shall be detrimental to the interest of investors or the public in general, the futures exchange may, after recording reasons in writing, immediately suspend futures broker till the time an opportunity of hearing is provided to the futures broker and a final decision is taken within a period of not more than thirty days.

(3) The Commission may, on its own motion or on application by an aggrieved person, review any disciplinary action taken by a futures exchange under sub-section (1) and may affirm, modify or set aside decision of the futures exchange after giving the futures broker and the futures exchange an opportunity of being heard.

(4) Nothing in this section shall preclude the Commission, in any case where a futures exchange fails to act against a futures broker, from suspending the licence of, or otherwise disciplining, a futures broker of the futures exchange, but before doing so the Commission shall give the futures broker and the futures exchange an opportunity of being heard:

Provided that where the Commission is satisfied that delay in the suspension of any futures broker shall be detrimental to the interest of investors or the public in general, the Commission may, after recording reasons in writing, immediately suspend any futures broker till the time an opportunity of hearing is provided to the futures broker and a final decision is taken within a period of not more than thirty days.

(5) Any action taken by a futures exchange under sub-section (1) shall be without prejudice to the power of the Commission to take such further action as it deems fit with regard to the futures broker or its licence.

12. Power of the Commission to issue directions to futures exchange.—(1) The Commission may, if considers necessary or expedient,—

- (a) for ensuring fair, efficient and transparent futures markets, or for ensuring fair, efficient and transparent clearing and settlement of transactions in futures contract;
- (b) for ensuring the integrity of, and proper management of systemic risks in, futures markets;
- (c) for ensuring a fair and proper governance structure of the futures exchange; or
- (d) in the interests of the public or for the protection of customers,

issue directions to a futures exchange by notice in writing either of a general or specific nature.

(2) Without prejudice to the generality of sub-section (1), any direction issued under that sub-section may relate to—

- (a) the trading or the termination of trading on or through the facilities of that futures exchange;
- (b) the manner in which futures exchange carries on its business; or
- (c) removing or suspending the directors or officers of the futures exchange from office or suspending futures brokers of the futures exchange; and
- (d) the clearing or settlement of futures contract and the making of adjustments of contractual obligations arising out of those futures contract;
- (e) any other matter that the Commission considers necessary for the effective administration of this Act or the rules and regulations made hereunder,

and the futures exchange shall comply with any such direction.

13. Emergency powers of Commission.— (1) Where the Commission has reason to believe or decides on the recommendation of futures exchange that an emergency exists, or where the Commission considers it necessary or expedient in the interest of the public or section of the public or for the protection of investors, the Commission may direct by notice in writing a futures exchange to take such action as it considers necessary to maintain or restore fair, efficient and transparent trading in futures contracts or any class of futures contract including but not limited to—

- (a) liquidate any position in respect of any futures contract or any class of futures contracts;
- (b) terminate trading on a futures market;

- (c) suspend trading on a futures market;
- (d) confine trading to liquidation of futures contracts positions;
- (e) order the liquidation of all positions or part thereof or the reduction in such positions;
- (f) limit trading to a specific price range;
- (g) modify trading days or hours;
- (h) alter conditions of delivery or settlement;
- (i) fix the settlement price at which positions are to be liquidated;
- (j) require any person to act in a specified manner in relation to trading in futures contracts or any class of futures contracts;
- (k) require margins or additional margins for any futures contracts; and
- (l) modify or suspend any of the regulations of a futures exchange, and the futures exchange shall comply with that direction.

(2) Where the Commission suspends trading on a futures market under clause (c) of sub-section (1), the suspension shall be for a period not exceeding three months, provided that the Commission may, if it considers it necessary, extend the suspension for one further period not exceeding three months at the expiry of which the Commission shall either notify the futures exchange in writing that the suspension has expired, or proceed to cancel the futures exchange licence or pass such order as it deems appropriate.

(3) Where a futures exchange fails to comply with a direction of the Commission under sub-section (1), within such time as is specified by the Commission, the Commission may take action under clause (b) of sub-section (1) of section 16.

(4) In this section, “emergency” means—

- (a) an act of Government affecting a commodity, securities or financial instruments;
- (b) any other market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity, securities or financial instruments; or
- (c) any other situation or practice which in opinion of the Commission constitutes an emergency.

14. Futures contracts to be approved by Commission.— (1) No futures exchange shall offer for trading a futures contract on the futures market established or operated by the futures exchange without the Commission's written approval for offering to trade in such futures contracts.

(2) The Commission may grant approval for the trading of a futures contract on the futures market established or operated by the futures exchange and subject to such conditions or restrictions as the Commission may consider fit:

Provided that in the case of approval of a futures contract based on—

- (a) securities issued by the Government of Pakistan;
- (b) securities denominated in currency other than Pakistani rupee and settled in currency other than Pakistani rupee;
- (c) exchange rate and settled in currency other than Pakistani rupee; or
- (d) interest rate and settled in currency other than Pakistani rupee,

the Commission shall consult the State Bank of Pakistan:

Provided further that in the case of approval of a futures contract where the underlying commodity is an essential food item, the Commission shall consult the provincial governments.

(3) The Commission may, by notice in writing served on the futures exchange, withdraw its approval given under sub-section (1) to trade a futures contract with effect from the date specified in the notice, where—

- (a) the futures exchange fails to comply with a condition or restriction imposed under sub-section (2); or
- (b) the Commission considers that it would be contrary to the interests of the investing public to permit trading in that futures contract to continue.

(4) The Commission shall not withdraw its approval under sub-section (3) without first giving the futures exchange an opportunity of being heard.

15. Fixing of position and trading limits in futures contracts.— (1) For the purpose of diminishing, eliminating or preventing excessive speculation in any commodity, securities or financial instruments under a futures contract, the Commission may, by notification in the official Gazette 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 or a class of persons, generally or specifically, under a futures contract traded on the futures market subject to the regulations of a futures 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, under a futures contract traded on the futures market of or subject to the regulations of a futures exchange, any number of

such contracts in excess of the trading limits fixed for one business day, or any other stated period set by the Commission; or

- (b) hold or control a gross buy or sell position under a futures contract traded on the futures market of or subject to the regulations of a futures exchange in excess of any position limit fixed by the Commission.

(4) Nothing in this section shall preclude the Commission from—

- (a) fixing different trading or position limits for different futures contracts, different delivery periods, or for different days remaining until the last day of trading in a futures contract; or
- (b) exempting transactions under this section.

16. Suspension or cancellation of futures exchange licence.— (1) The Commission may, by notice in writing served on the futures exchange,—

- (a) suspend the licence granted under this Act with effect from the date specified in the notice for such period as may be specified in the notice; or
- (b) supersede the governing body or other authority of the futures exchange; or
- (c) suspend or remove the director or officer from his office, or suspend or remove a TRE certificate holder from futures exchanges; or
- (d) cancel a futures exchange licence granted under this Act with effect from the date specified in the notice if the futures exchange—
 - (i) ceases to comply with the eligibility conditions specified in section 4;
 - (ii) ceases to operate a futures market that it has been licensed to operate under section 5;
 - (iii) is being wound up or enters into an arrangement with its creditors or members without prior written approval of the Commission;
 - (iv) fails to comply with any requirement of this Act or any other applicable law;
 - (v) fails to comply with a direction of the Commission;
 - (vi) fails to provide to the Commission information required by the Commission, or provides false or misleading information;
 - (vii) is operating in a manner detrimental to the public interest; or
 - (viii) requests the Commission to do so.

(2) For the purposes of sub-clause (ii) clause (d) of sub-section (1) a futures exchange shall be deemed to have ceased to operate its futures market, if—

- (a) it has ceased to operate its futures market for more than thirty days unless it has obtained prior written approval of the Commission to do so; or
- (b) it has ceased to operate such futures market under a direction issued by the Commission under section 12 or section 13.

(3) The Commission may by the notice served under sub-section (1) permit the futures exchange to continue, on or after the date on which the suspension or cancellation is to take effect, to carry on such activities affected by the suspension or cancellation as the Commission may specify in the notice for the purpose of—

- (a) closing down the operations of the futures exchange; or
- (b) protecting the public interest.

(4) Except where responding to a request under sub-clause (viii) of clause (d) of sub-section (1), the Commission shall not take action under sub-section (1) without first giving the futures exchange an opportunity of being heard.

(5) Any notice of supersession under clause (b) of sub-section (1) may direct that the functions of the governing body of the futures exchange shall be performed during the period of supersession by such person as may be specified in the notice.

(6) Where the Commission suspends or cancels the licence of a futures exchange under this section, it shall cause notice of that fact to be published in at least two daily newspapers having wide circulation.

17. Effect of cancellation.—Cancellation of a licence referred to in section 16 shall not operate so as to—

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

18. Accounts and audit.— (1) A futures exchange shall keep proper books of accounts and records of its income and expenditure, assets and liabilities and all other transactions of the futures exchange as may be prescribed.

(2) A futures exchange shall, within three months of the close of each financial year, send to the Commission or such later time as allowed by the Commission, audited financial statements along with auditor's report of the futures exchange for the financial year, including such other items as may be prescribed.

(3) The Commission may, where it deems appropriate, also require operational and regulatory audit of futures exchange to be conducted by an independent auditor in a prescribed manner and auditors shall furnish report in such a manner as may be prescribed.

(4) The auditors shall have a right of access at all reasonable times to the books, accounts, vouchers and other records of the futures exchange and shall be entitled to require from officers of the futures exchange such information and explanations as they consider necessary for the performance of their duties as auditor.

(5) The accounting and other records required to be reported under this section shall be preserved by the futures exchange for a period of ten years or such longer period as may be prescribed.

19. Power of the Commission to appoint auditor.— (1) Where the Commission is satisfied that it is in the public interest to do so, it may appoint in writing a special auditor at the expense of the futures exchange to examine, audit and report, either generally or in relation to any matter, on the books, accounts and records of a futures exchange.

(2) The Commission may appoint special auditors to furnish to the Commission a regulation compliance audit report in the form and manner as may be prescribed.

20. Annual report.— (1) A futures exchange shall, within four months of the close of its financial year or such later time as allowed by the Commission, submit to the Commission an annual report that includes—

- (a) a description of the activities undertaken by the futures exchange in the financial year;
- (b) the resources including financial, technological and human resources that the futures exchange had available, and used, in order to ensure compliance with its obligations and, in particular, its obligation to ensure that the futures market of the futures exchange operates in a fair, efficient and transparent manner;
- (c) an analysis of the extent to which the futures exchange considers that the activities undertaken, and resources used, have resulted in full compliance with all of its obligations under this Act, rules, regulations made by the Commission and the regulations of the futures exchange; and
- (d) an independent regulation compliance report from the auditor certifying regulatory compliance of the futures exchange during the financial year.

(2) The futures exchange shall ensure that the annual report is accompanied by such other information and statements as may be prescribed.

(3) The annual report shall be accompanied by an audit report.

(4) The Commission may, by giving written notice to a futures exchange, require the futures exchange 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.

PART III

CLEARING HOUSES

21. Interpretation.— (1) In this Part,—

- (a) “central depository” means any company licensed by the Commission for handling of securities as envisaged in the Central Depositories Act, 1997 (XIX of 1997);
- (b) “defaulter” means a clearing member who is the subject of any default proceedings;
- (c) “market charge” means a charge, whether fixed or floating, granted in favour of a clearing house—
 - (i) over any property which is held by or deposited with the clearing house; and
 - (ii) for the purpose of securing liabilities arising directly in connection with the clearing house ensuring the settlement of a market contract; and
- (d) “market collateral” includes cash or any other prescribed form of collateral which is held by or deposited with a clearing house for the purpose of securing liabilities arising directly in connection with the clearing house ensuring the settlement of a market contract.

(2) Where a charge is created partly for the purpose specified in clause (b) of sub-section (1) and partly for other purposes, the charge, for the purposes of this Part, shall be a market charge in so far as it has effect for that specified purpose.

(3) Where any collateral is granted partly for the purpose specified in clause (c) of sub-section (1) and partly for other purposes, the collateral, for the purposes of this Part, shall be a market collateral in so far as it has been provided for that specified purpose.

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

- (a) the Companies Ordinance, 1984 (XLVII of 1984); and
- (b) any other enactment which is concerned with or in any way related to the insolvency of a person.

(5) References in this Part to settlement, in relation to a market contract, shall be construed to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

(6) A central depository shall perform its duties as per applicable law in connection with the clearing and settlement of futures contracts which shall be settled through actual movement of underlying securities.

22. Licensing requirement.— (1) No person shall establish or operate or assist in establishing or operating or hold himself out as operating a clearing facility except under and in accordance with a clearing house licence granted by the Commission under section 24.

(2) The Commission shall determine the number and places for the establishment of clearing houses:

Provided that a futures exchange which is operating a clearing facility in respect of future contracts based on commodities or financial instruments, before the commencement of this Act, shall be allowed to continue operating such facility and be deemed as a clearing house for the purpose of this Act for such period as may be notified by the Commission.

23. Eligibility for licensing.— (1) Subject to sub-section (2), a public company shall be eligible for licensing as a clearing house only, if—

- (a) it has, and maintains at all times, a minimum paid-up capital (net of losses) of five hundred million rupees or such higher amount as may be notified by the Commission;
- (b) its shareholding is held, directly or indirectly, in such percentage as may be notified by the Commission, by following—
 - (i) a futures exchange or any connected company or the majority shareholder of such futures exchange, or an associate of the majority shareholder of such futures exchange; or
 - (ii) a securities exchange or any connected company or the majority shareholder of such securities exchange, or an associate of the majority shareholder of such securities exchange:

Provided that the Commission may in the official Gazette notify any class or classes of persons to hold such number of shares of the clearing house as the Commission deems appropriate:

Provided further that any sale or purchase of shares of the clearing house shall be subject to prior approval of the Commission;

- (c) its promoters, directors and senior management officers fulfil the fit and proper criteria as may be prescribed; and
- (d) it satisfies such other conditions as may be prescribed.

(2) For the purposes of clause (b) of sub-section (1), two or more companies are connected companies if one of them is—

- (a) the holding company of the other;
- (b) a subsidiary of the other; or

- (c) a subsidiary of the holding company of the other.

24. Grant of licence.— (1) A public company eligible for a licence may apply to the Commission to be licensed as a clearing house in such form and manner as may be prescribed.

(2) An application under sub-section (1) shall be accompanied by prescribed fee.

(3) The Commission may require an applicant to provide to the Commission such further information, as it considers necessary in relation to the application, in such form or verified in such manner as the Commission may direct.

(4) The Commission may, in writing, subject to such conditions or restrictions as it may consider fit to impose, grant a licence to a public company as a clearing house if the Commission is satisfied that the company will ensure that as far as is reasonably practicable there are fair, efficient and transparent clearing arrangements for transactions in futures contracts; the company will manage any risks associated with its business and operations prudently and the company will enforce compliance by its members with its regulations.

(5) In exercise of its powers to grant licence under sub-section (4), the Commission shall have regard as to whether—

- (a) the company's regulations make satisfactory provision for—
 - (i) proper regulation and efficient operation of the clearing facility which it operates;
 - (ii) proper regulation and supervision of its clearing members;
 - (iii) equitable allocation of reasonable dues, fees and other charges among its clearing members and other persons using its facilities; and
 - (iv) any other matters as may be specified by the Commission from time to time;
- (b) the company has sufficient financial, human and system resources to—
 - (i) establish and operate a fair, efficient and transparent clearing facility;
 - (ii) meet contingencies or disasters including events such as technical complications occurring with automated systems;
 - (iii) provide adequate security arrangements; and
 - (iv) any other matters as may be specified by the Commission; and
- (c) it would not be contrary to the public interest to licence the company.

(6) Subject to the provisions of this Act, a clearing house licence shall be granted subject to such annual renewal fee as may be prescribed.

25. Duties of clearing house.— (1) It shall be duty of a clearing house to ensure—

- (a) a fair, efficient and transparent clearing and settlement arrangements for transactions in futures contracts cleared or settled through its facilities; and
- (b) that risks associated with its business and operations are managed prudently.

(2) In discharging its duty under sub-section (1), a clearing house shall act in interest of the public, having particular regard to interest of the customers.

(3) A clearing house shall operate its facilities in accordance with the regulations made under section 26 and approved under section 27.

(4) A clearing house shall formulate and implement appropriate procedures for ensuring that its clearing members comply with its regulations.

(5) A clearing house shall preserve confidentiality with regard to all information in its possession concerning its clearing members and their customers, except that such information may be disclosed by the clearing house when required in writing to do so by the Commission or the futures exchange under its regulations or required under other law for the time being in force or if it is ordered by the Court to do so.

(6) A clearing house shall have efficient procedures and arrangements for addressing customer complaints.

(7) A clearing house shall immediately notify to the Commission if it becomes aware—

- (a) of a financial irregularity or other matter which in opinion of the clearing house may indicate that its financial integrity is in question or that it is unable to meet its legal obligations;
- (b) that any of its clearing members is unable to comply with any regulation of the clearing house; and
- (c) of a financial irregularity or other matter which in 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.

(8) A clearing house shall immediately notify to the Commission about any action taken by it against a clearing member.

(9) A clearing house shall, for the conduct of its business, at all times provide and maintain—

- (a) adequate and properly equipped premises;
- (b) automated systems, with adequate capacity, facilities to meet contingencies or emergencies, physical, virtual and logical security arrangements and technical support; and
- (c) comprehensive business continuity plan.

(10) A clearing house shall ensure that appointment or removal of its chief executive officer and chief regulatory officer, by whatever name called, is made with prior approval of the Commission.

26. Regulations of clearing house.— (1) Without limiting the generality of section 24, the regulations of a clearing house shall make provision to the satisfaction of the Commission—

- (a) for the registration of futures contracts;
- (b) for the settlement of transactions involving futures contracts;
- (c) for guaranteeing to its clearing members the performance of futures contracts;
- (d) for setting up a settlement guarantee fund;
- (e) with respect to the constitution, powers and functions of the governing body of the clearing house;
- (f) with respect to the eligibility, admittance and conduct of clearing members;
- (g) with respect to operational, information system and regulatory audit of the clearing house and its clearing members;
- (h) with respect to the manner of establishment, maintaining and operating clearing accounts with the clearing house;
- (i) with respect to the establishment and operations of clearing and settlement system;
- (j) with respect to the development of risk management system including control measures and safeguards with respect to large exposures and matters connected therewith;
- (k) with respect to the establishment, maintenance and contributions to the clearing and settlement fund and investments thereon;
- (l) with respect to the mechanism and procedure for satisfaction of loss or liability in the clearing settlement system;
- (m) with respect to the mechanism for inspection and provisions relating to audit and compliance of clearing member including cooperation with other licensed entities for violation of any requirement of this Act or any rules or regulations made thereunder;
- (n) with respect to the statements to be sent by the clearing house to its clearing members;
- (o) with respect to regulating access to the computer settlement system of the clearing house and the limits of such access;

- (p) with respect to the fee and charges payable for facilities and services provided by a clearing house;
- (q) with respect to the dispute resolution between clearing members, complaint handling, disciplinary action, hearing and appeal procedure;
- (r) for the expulsion, suspension or disciplining of members for any contravention of the regulations of the clearing house;
- (s) with respect to acting as central counter party; and
- (t) generally for carrying on the business of the clearing house.

(2) In addition to the requirements of sub-section (1), the regulations 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 clearing member has failed, or appears to be unable, or likely to become unable, to meet its obligations for all unsettled or open market contracts to which he is a party.

(3) Where a clearing house undertakes default proceedings, all subsequent actions for settlement of market contracts to which the defaulter is a party shall be presumed to be taken under the default regulations.

(4) The regulations of a clearing house shall apply to the employees and representatives of its clearing members and the clearing member shall be responsible to ensure their compliance with such regulations.

(5) The power to make regulations conferred by this section on the clearing house shall be subject to the condition of previous publication of the said regulations on the website of clearing house along with a rational for eliciting public opinion thereon within a period of not less than seven days from the date of its placement on website:

Provided that, on an application by the clearing house, the Commission may waive the condition of placement of proposed regulations on the website of the clearing house in cases requiring the immediate implementation of a proposed regulation.

(6) The Commission may, by notice in writing served on a clearing house, require it—

- (a) to make regulations specified in the notice within the period specified; or
- (b) to amend regulations referred to in the notice in the manner and within the period specified in the notice.

(7) Where the Commission is satisfied that a clearing house has not complied with a requirement referred to in sub-section (6), within the specified period the Commission may make or amend the regulations specified in the notice instead of the clearing house and the regulations so made or amended shall be deemed to have been made or amended by the clearing house and shall have effect accordingly.

27. Approval of regulations or amendments to regulations of clearing house.— (1) No regulation of a clearing house or any amendment whether by way of rescission, substitution, alteration or addition thereto, shall have effect unless it has the approval in writing of the Commission.

(2) A clearing house shall submit or cause to be submitted to the Commission for its approval the regulations and every amendment thereto that require approval under sub-section (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them.

(3) The Commission shall, by notice in writing served on the clearing house, give its approval or refuse to give its approval together with its reasons for the refusal to the regulations or amendment of the regulations, as the case may be, or any part thereof

(4) The Commission may give its approval under sub-section (3) subject to requirements that shall be satisfied before the regulations or amendment of the regulations or any part thereof takes effect.

(5) Subject to the approval of the Commission under sub-section (3), all regulations or amendments to the regulations made by the clearing house shall be notified in the official Gazette and shall take effect on such date as may be specified in the notification.

28. Statutory obligation of clearing members to comply with regulations of clearing house. Members of a clearing house shall comply with the regulations of that clearing house.

29. Clearing house to assist the Commission. A clearing house shall provide such assistance to the Commission as the Commission may require for the performance of the functions and duties of the Commission, including the furnishing of such returns and the provision of such books and other information relating to the business of the clearing house or in respect of any trading in futures contracts, any clearing arrangements for futures contracts or any other specified information as the Commission may require for the proper administration of this Act.

30. Review of disciplinary action taken by clearing house.— (1) Where a clearing house reprimands, penalizes, suspends, expels or otherwise takes disciplinary action against a clearing member in accordance with its regulations, the clearing house shall immediately inform the Commission in writing of the name of the clearing member, the reason for and nature of the action taken, the amount of any penalty imposed and the period of any suspension or expulsion.

(2) The clearing house shall grant an opportunity of being heard to its clearing member before it imposes penalty, reprimands, suspends, expels or otherwise takes disciplinary action against the member:

Provided that where the clearing house is satisfied that delay in the suspension of its member shall be detrimental to the interest of investors or the public in general, the clearing house may, after recording reasons in writing, immediately suspend its member till the time an opportunity of hearing is provided to the member and a final decision is taken within a period of not more than thirty days.

(3) The Commission may, on its own motion or on application by an aggrieved person, review any disciplinary action taken by a clearing house under sub-section (1) and may affirm, modify or set

aside the decision of the clearing house after giving the clearing member and the clearing house an opportunity of being heard.

(4) Nothing in this section shall preclude the Commission, in any case where a clearing house fails to act against a clearing member, from cancelling or suspending the licence of, or otherwise disciplining, a clearing member, but before doing so the Commission shall give the clearing member and the clearing house an opportunity to be heard.

(5) Any action taken by a clearing house under sub-section (1) shall be without prejudice to the power of the Commission to take such further action as it deems fit with regard to the clearing member or its licence.

31. Power of the Commission to issue directions to clearing house.— (1) The Commission may, if it considers it necessary or expedient—

- (a) for ensuring a fair, efficient and transparent clearing and settlement of transactions in futures contracts;
- (b) for ensuring the integrity of and proper management of systemic risks in futures markets; or
- (c) in the interests of the public or for the protection of customers,

issue directions by notice in writing either of a general or specific nature to a clearing house.

(2) Without prejudice to the generality of sub-section (1), any direction issued under that sub-section may relate to—

- (a) the clearing and settlement of futures contracts and the making of adjustments of contractual obligations arising out of those futures contracts;
- (b) the manner in which a clearing house carries on its business;
- (c) removing or suspending the directors or officers of the clearing house from office or suspending clearing members of the clearing house; and
- (d) any other matter that the Commission considers necessary for the proper administration of this Act or the rules and regulations made thereunder,

and the clearing house shall comply with any such direction.

32. Emergency powers of Commission.— (1) Where the Commission has reason to believe or decides on the recommendation of clearing house that an emergency exists, or where the Commission considers it necessary or expedient in the interest of the public or for the protection of customers, or where the Commission takes action under section 13, 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, clearing or settlement;

- (b) fixing the settlement price at which futures contracts are to be liquidated;
- (c) requiring additional deposits;
- (d) requiring margins or additional margins for any futures contracts; and
- (e) modifying or suspending any of the regulations of the clearing house, and the clearing house shall comply with that direction.

(2) Where a clearing house fails to comply with a direction of the Commission under sub-section (1), within such time as is specified by the Commission, the Commission may take all necessary actions as it deem appropriate.

(3) In this section, “emergency” means—

- (a) any act of government affecting a commodity or securities or financial instruments;
- (b) any other market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity or securities or financial instruments; or
- (c) any other situation or practice which in the opinion of the Commission constitutes an emergency.

33. Suspension or Cancellation of clearing house licence.— (1) The Commission may, by notice in writing served on the clearing house, suspend for such period as may be specified in the notice or cancel a clearing house licence granted under this Act with effect from the date specified in the notice if the clearing house—

- (a) ceases to operate the clearing facility that has been licensed to operate under section 24;
- (b) ceases to comply with the eligibility conditions specified in section 23;
- (c) is being wound up;
- (d) fails to comply with any requirement of this Act;
- (e) fails to comply with a direction of the Commission;
- (f) fails to provide to the Commission 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) For the purposes of sub-section (1), a clearing house shall be deemed to have ceased to operate as a clearing house, if—

- (a) it has ceased to operate its clearing facility for more than thirty days unless it has obtained prior approval of the Commission to do so; or
- (b) it has ceased to operate such clearing facility under a direction issued by the Commission under section 31 or power exercised under section 32.

(3) The Commission may by the notice served under sub-section (1), permit the clearing house to continue, on or after the date on which the cancellation is to take effect, to carry on such activities affected by the cancellation as the Commission may specify in the notice for the purpose of—

- (a) closing down the operations of the clearing house; or
- (b) protecting the public interest.

(4) Except where responding to a request under clause (h) of sub-section (1), the Commission shall not cancel a clearing house licence without first giving the clearing house an opportunity of being heard.

(5) Where the Commission suspends or cancels the licence of a clearing house under this section, it shall cause notice of that fact to be published in at least two daily newspapers having wide circulation.

(6) Any notice of suspension under sub-section (1) may direct that the functions of the governing body of the clearing house shall be performed during the period of suspension by such person as may be specified in the notice.

34. Effect of cancellation of licence. A cancellation of licence under section 33 shall not operate so as to—

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

35. 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 as may be prescribed.

(2) The clearing house shall, within three months after the end of each financial year or such later time as may be prescribed by the Commission, send to the Commission audited financial statements alongwith the auditors' report of the clearing house for the financial year, including income and expenditure, assets and liabilities cash flow statement and such other items as may be prescribed.

(3) The Commission may, where it deems appropriate, also require operational and regulatory audit to be conducted by an independent auditor in a prescribed manner.

(4) The auditors report shall be in such manner as may be prescribed.

(5) 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 shall be entitled to require from officers of the clearing house such information and explanations as they consider necessary for performance of their duties as auditors.

(6) The accounting and other records required to be reported under this section shall be preserved by the clearing house for a period of ten years or such longer period as may be prescribed.

36. Power of the Commission to appoint auditor.— (1) Where the Commission is satisfied that it is in the public interest to do so, it may appoint in writing an auditor for special audit 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.

(2) The Commission may appoint special auditors to furnish to the Commission a regulation compliance audit report in such form and manner as may be prescribed.

37. Annual report.— (1) A clearing house shall, within four months on the close of its financial year or such later time as may be allowed by the Commission, give to the Commission an annual report which shall include—

- (a) a description of the activities undertaken by the clearing house in the financial year;
- (b) the resources including financial, technological and human resources that the clearing house had and used, in order to ensure compliance with its obligations;
- (c) 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 this Act, rules, regulations made by the Commission and the regulations of the clearing house; and
- (d) an independent regulations compliance report from the auditor certifying regulatory compliance of the clearing house during the financial year.

(2) The clearing house shall ensure that the annual report is accompanied by such other information and statements as may be prescribed.

(3) The annual report shall be accompanied by an audit report where required by the Commission under sub-section (4).

(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.

38. Proceedings of clearing house take precedence over laws of insolvency.— (1) The following shall not, to any extent, be invalid 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, namely:—

- (a) a market contract;
- (b) the regulations of a clearing house relating to the settlement of a market contract;
- (c) any proceedings or other action taken under the regulations of a clearing house relating to the settlement of a market contract;
- (d) a market charge;
- (e) the default regulations of a clearing house; or
- (f) any default proceedings.

(2) No person or a 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 regulations of a clearing house; or
- (b) any default proceedings.

39. Duty to report on completion of default proceedings.— (1) A clearing house shall, upon completion by it of any default proceedings, prepare a report on such proceedings stating in respect of each defaulter—

- (a) the action taken against the defaulter; and
- (b) the net sum, if any, certified by the clearing house to be payable by or to the defaulter ; or
- (c) the fact that no sum is payable.

(2) A clearing house which has prepared a report pursuant to sub-section (1) shall supply the report to—

- (a) the Commission;
- (b) the relevant futures exchange;
- (c) the defaulter to whom the report relates.

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

(4) Where a defaulter receives, pursuant to sub-section (2), a report made pursuant to sub-section (1), he shall, at the request of any of his creditors—

- (a) make the report available for inspection by the creditor within two days of the receipt of such request; and
- (b) on payment of the prescribed fee, supply to the creditor all or any part of that report.

Explanation.—In sub-sections (2), (3) and (4), “report” includes a copy of a report.

40. Net sum payable on completion of default proceedings.— (1) This section shall apply to any net sum certified under clause (b) of sub-section (1) of section 38 by a clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

(2) Where a receiving or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall be—

- (a) provable in the bankruptcy or winding up; and
- (b) taken into account for the purpose of any law relating to set-off.

(3) For the purposes of sub-section (2), the certificate of the clearing house as to the amount of the net sum payable shall be receivable in evidence as sufficient proof of the net sum payable.

41. Disclaimer of property, rescission of contracts.— (1) Section 407 of the Companies Ordinance, 1984 (XLVII of 1984) shall not apply in relation to—

- (a) a market contract;
- (b) a contract effected by a clearing house for the purpose of realizing property provided as market collateral;
- (c) a market charge; or
- (d) any default proceedings.

(2) Section 406 of the Companies Ordinance, 1984 (XLVII of 1984), shall not apply to any act, matter or thing which has been done pursuant to—

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by a clearing house for the purpose of realizing property provided as market collateral, or any disposal of property pursuant to such a contract;
- (e) a disposal of property in accordance with the regulations of a clearing house as to the application of property provided as market collateral;

- (f) a disposal of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposal is made;
- (g) a disposal of property made in enforcing a market charge;
- (h) a market charge; or
- (i) any default proceedings.

42. Enforcement of judgements over property subject to market charge.— (1) Notwithstanding anything contained in any other law for the time being in force, where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgement or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of the clearing house concerned.

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

43. Clearing member to be party to certain transactions as principal.— Where for the purposes of fulfilling clearing and settlement obligation or margin call or mark-to-market loss or any other obligation, whatsoever, a clearing member enters into any transaction or contract with a clearing house, irrespective of its nature, including but not limited to a market contract, in the capacity as a principal or agent, notwithstanding anything contained in any other law, rule or regulation, in such transaction or contract the clearing member shall act and be considered as principal and liable to make payment or delivery, to the clearing house, as the case may be.

44. Property deposited with clearing house.— (1) Subject to sub-section (2), where any property is deposited as market collateral by a clearing member with a clearing house in accordance with the regulations of the clearing house, then, notwithstanding any other enactment or law, no action, claim or demand, either civil or criminal, in respect of any right, title or interest in such property held or enjoyed by any person shall lie, or shall be commenced or allowed, against the clearing house or its nominees.

(2) The operation of sub-section (1) in respect of any property deposited as market collateral with a clearing house is subject to any modifications and exclusions provided in the regulations of the clearing house.

45. Preservation of rights. Except to the extent that they expressly provide, the provisions of this Part shall not operate to limit, restrict or otherwise affect—

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

PART IV

REGULATED ACTIVITIES

46. Scope of regulated activities. For the purposes of this Act, a person shall be deemed to be carrying on a regulated activity if such person carries out business or purports to do so, as a—

- (a) future's adviser;
- (b) future's broker;
- (c) representative; or
- (d) any other activity as may be notified by the Federal Government.

47. Licensing requirement.— (1) No person, whether as principal or agent, shall carry on a regulated activity or purport to do so, unless such person is licensed by the Commission under this Part and operates in accordance with such licence.

(2) A licence granted under this Act shall specify the regulated activity or activities that the regulated person is permitted to undertake and such person shall be restricted to such regulated activity or activities as so specified.

(3) Any person to whom issued a TRE certificate shall obtain licence as a futures broker not later than six months from the date of issuance of such TRE certificate and shall commence business not later than three months from the date of obtaining such licence.

(4) The Commission may by notification in the official Gazette, exempt any financial institution or class of financial institutions from the operation of sub-section (1) subject to such terms and conditions as may be prescribed. .

Explanation.—For the purposes of this sub-section the expression “financial institution” shall have the same meaning as defined under clause (15A) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984).

48. Eligibility for licensing.— (1) A licence in respect of a regulated activity shall only be granted to a public or private company except that,—

- (a) in the case of a futures adviser, a licence may be granted to an individual or to a public or private company.
- (b) in the case of a representative, a licence may be granted only to an individual.

(2) A representative shall not be licensed under sub-section (1) unless he is accredited to a principal.

(3) A company which is licensed under this Part as a future's broker or future's adviser shall at all times employ at least one individual who is licensed as a representative under this Part.

(4) A regulated person that is licensed to indulge in a regulated activity shall be restricted to undertake only that activity exclusively:

Provided that the Commission may allow such regulated person to engage in any other activity which is regulated under any law administered by the Commission.

(5) In the case of a bank a future broker's licence or futures advisor licence under this Part, except a licence for any regulated activity as may be prescribed, shall be granted only to a subsidiary company of the bank for such purpose and such subsidiary shall be exclusively engaged in regulated activities.

49. Representatives. No person shall act as a representative in carrying on business in any regulated activity or hold himself out as doing so, unless he is holder of a representative's licence granted by the Commission for that regulated activity and is duly accredited to a principal.

50. Accreditation of representatives.— (1) A representative is accredited to a principal for the purposes of this Act only, if—

- (a) the licence of the representative states that he is accredited to the principal; and
- (b) the representative is recorded as being accredited in the register of regulated persons maintained by the Commission under section 55.

(2) The Commission shall not issue a representative's licence unless both the representative and the principal have informed 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 principal shall immediately notify to the Commission, and any futures exchange of which he is a TRE certificate holder, in writing of such termination;
- (b) the principal shall publish in two daily newspapers having wide circulation a notice advising of such termination and shall make arrangements for the placement of the notice on the futures exchange website;
- (c) the representative shall forthwith return his licence to the Commission; and
- (d) the Commission shall forthwith amend the register of regulated persons accordingly.

51. Application for licence.— (1) An application for a licence under this Part shall be made to the Commission in prescribed form and shall be accompanied by prescribed fee and shall—

- (a) give to the Commission information it requires—
 - (i) about the services which the applicant will hold himself out as being able to provide if the application is allowed;
 - (ii) about the business which the applicant proposes to carry on and to which the application relates, and about any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business; and

(iii) to enable the Commission to consider the matters referred to in section 95; and

(b) specify the location of all premises at which the records or other documents of the regulated activity in respect of which the application is made are to be kept.

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

(3) An application for the grant of a representative's licence shall be supported in the prescribed manner by a principal who is the holder of or who has applied for, a licence to conduct a regulated activity.

52. Grant of licence.— (1) Subject to the provisions of this Act, the Commission may, on an application duly made in accordance with section 51, grant the licence or refuse the application.

(2) The Commission shall grant a licence, if satisfied that the applicant—

- (a) is a fit and proper person to be licensed, having regard to the provisions of section 95;
- (b) where it is a company, employs at least one individual who is licensed as a representative under this Part;
- (c) will be able, if licensed, to comply with any financial resources regulations that may apply to the applicant;
- (d) has specified premises under clause (b) of sub-section (1) of section 51 that are suitable for keeping records or other documents;
- (e) in the case of an application for a representative's licence, has passed such examination and undertaken such training as may be prescribed;
- (f) complies with the conditions prescribed in relation to anti-money laundering and counter financing of terrorism under the applicable laws; and
- (g) satisfies such other conditions as may be prescribed.

(3) Subject to the provisions of this Act, a licence granted under this section shall be granted for a period of one year and may be renewed for further period of one year, provided that—

- (a) the regulated person applies for renewal of licence one month prior to the expiry of his licence;
- (b) pays the prescribed annual licence fee; and
- (c) meet the requirements of sub-section (2).

(4) Subject to the provisions of this Act, where the applicant is a TRE certificate holder of a futures exchange which is licensed to offer, for trade, futures contracts based on commodities and financial instruments, the licence granted to the applicant shall be only in respect of the futures contracts based on commodities and financial instruments.

(5) Subject to the provisions of this Act, where the applicant is a TRE certificate holder of a futures exchange which is licensed to offer, for trade, futures contracts based on securities, the licence granted to the applicant shall only be in respect of—

- (a) futures contract based on securities; and
- (b) futures contract based on financial instruments,

to the extent and manner as may be notified by the Commission.

53. Power of the Commission to impose conditions.— (1) The Commission may grant a licence under this Part subject to such conditions or restrictions as it considers necessary.

(2) The Commission may, by written notice served on the holder of the licence, amend or cancel any of the conditions or attach new conditions.

54. Power of the Commission to issue directions to regulated persons.— (1) The Commission may by notice in writing give to a regulated person a direction under this section where it appears to the Commission that—

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

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

- (a) require a regulated person to cease and desist from the contravention;
- (b) prohibit a regulated person 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 regulated person 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;
- (d) prohibit a regulated person from carrying on business in a specified manner or otherwise than in a specified manner;

- (e) as regards any assets whether in Pakistan or elsewhere and whether they are the assets of the regulated person or not—
 - (i) prohibit the regulated person 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 regulated person to deal with such assets in a manner specified in the notice;
- (f) require a regulated person to maintain in Pakistan assets of such value as appear to the Commission to be desirable with a view to ensuring that the regulated person will be able to meet his liabilities in respect of his business; or
- (g) require a regulated person to transfer control of assets of a specified class or description to a trustee approved by the Commission.

and a regulated person shall comply with such direction.

(3) A direction under this section shall be for such specified period as the Commission considers necessary which period may be extended by the Commission as considered necessary by it.

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

55. Register of regulated persons.— (1) The Commission shall maintain a register of regulated persons in the form it considers most appropriate.

(2) For each regulated person, other than a representative, the register maintained under subsection (1) shall record—

- (a) name and address of the regulated person;
- (b) date on which the licence was granted;
- (c) type of regulated activity permitted by the licence;
- (d) any conditions attached to the licence;
- (e) name and address of every accredited representative, manager and officer;
- (f) location of the premises at which the records or other documents of the regulated person are kept;
- (g) where the regulated person is a company, the name of each director and of secretary of the company and names of the majority shareholder;

- (h) any order of cancellation or suspension of licence; and
- (i) such other particulars as the Commission considers necessary in the interest of the investing or general public.

(3) For each representative, the register maintained under sub-section (1) shall record—

- (a) his name and office address;
- (b) date on which his licence was granted;
- (c) name and address of the principal to whom he is accredited; and
- (d) such other particulars as the Commission considers desirable in interest of the investing or general public.

(4) The register referred to in sub-section (1) shall be made available on website of the Commission and futures exchange.

(5) Any person may apply for a certified copy of the information contained in the register upon payment of the prescribed fee in the prescribed manner.

56. Notification of change in particulars of register.— Where—

- (a) a regulated person ceases to carry on the business to which his licence relates; or
- (b) a change occurs in any matter, particulars of which are required by section 55 to be entered in the register,

the regulated person shall as soon as is practicable and in any event within seven days give to the Commission notice in writing of the event concerned.

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PART V

CONDUCT OF REGULATED ACTIVITIES

57. Standards of conduct.— In the conduct of regulated activities, a regulated person shall at all times act according to the principles of best practice and, in particular, shall—

- (a) observe a high standard of integrity and fair dealing;
- (b) act with due care, skill and diligence;
- (c) observe high standards of market conduct;
- (d) seek from customers information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the regulated person to fulfil his responsibilities to the customer;

- (e) take steps to give public information to every customer which will enable the customer to make a balanced and informed investment decision;
- (f) avoid any conflict of interest with customers and, where such a conflict unavoidably arises, to ensure fair treatment to the customer by complete disclosure and the interests of the regulated person should never be unfairly placed above those of the customer;
- (g) protect properly, by way of segregation and identification, those customer assets for which the regulated person is properly responsible;
- (h) maintain adequate financial resources to meet the regulated activities commitments of the regulated person and withstand the risks to which the business is subject;
- (i) organise and control internal affairs in a responsible manner;
- (j) keep proper records and maintain such records for a period of ten years or such longer period as notified by the Commission;
- (k) have efficient procedures and arrangements for addressing customer's complaints and settlement of customer's claims;
- (l) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, together with well-defined compliance procedures; and
- (m) have adequate system of internal controls and internal audit, ensuring compliance with the relevant laws for the time being in force;
- (n) make efforts to resolve any dispute through mediation; and
- (o) deal with the Commission in an open and co-operative manner and keep the Commission informed of anything concerning the regulated person that might be expected to be disclosed to it.

58. Business conduct regulations.— (1) Without prejudice to section 114, the Commission may make regulations requiring regulated persons to comply with such practices and standards relating to their conduct in carrying on the regulated activities for which they are licensed as are specified in the regulations.

(2) Without limiting the generality of sub-section (1), the Commission may make regulations for or with respect to—

- (a) the use of misleading or deceptive advertisements by or on behalf of a regulated person;
- (b) the disclosure to a customer of the financial risks in respect of trading of futures contracts recommended by the regulated person to the customer;

- (c) the avoidance of any conflict of interest between the regulated person and a customer;
- (d) recommendations made by a regulated person;
- (e) the priority to be given to customer's orders;
- (f) fit and proper criteria for the promoters, directors and senior management officers and officers of the regulated person;
- (g) implementation of in-house compliance and internal audit function to ensure compliance to the applicable regulatory framework;
- (h) observance of fair trade and market practices and prohibition of market abuses, fraudulent practices and deception of general public;
- (i) trading against a customer; and
- (j) any other matter relating to the practices and standards of conduct required of a regulated person in conducting the regulated activity for which the regulated person is licensed.

59. Risk disclosure statements. No futures broker shall open a futures trading account for a customer, unless he—

- (a) furnishes to the customer a separate written risk disclosure statement which shall be in such form and contain such information as may be prescribed; and
- (b) receives from the customer an acknowledgement in such form and manner as may be prescribed that he has received and understood the nature and contents of the risk disclosure statement.

60. Customer agreement. No regulated person shall act for any customer otherwise than in accordance with the terms of a written agreement to be called a customer agreement, which shall contain such matters as may be prescribed.

61. Issue of contract confirmation note.— (1) A futures broker shall furnish to his customers, in the manner prescribed, contract confirmation note in respect of each futures contract executed by the regulated person on behalf of that customer.

(2) A contract confirmation note under sub-section (1) shall include such information as may be prescribed.

62. Customer assets.— (1) A regulated person shall—

- (a) treat and deal with all customer assets received by him from a customer to margin, guarantee or secure contracts in futures trading, or accruing to a customer as a result of such trading, as belonging to that customer;

- (b) account for in a separate trust account, designated or evidenced as such, for all the customer assets received from the customer or accruing to the customer pursuant to clause (a); and
- (c) not commingle customer assets with the assets of the regulated person.

(2) Without prejudice to section 114, the Commission may make regulations with respect to the segregation, safekeeping and utilization of customer assets that a regulated person holds on behalf of a customer.

(3) Without limiting the generality of sub-section (2), such regulations may—

- (a) require customer money to be paid into segregated bank accounts established for customer money and designated as trust accounts or customer accounts;
- (b) make provision with respect to the opening, control and keeping of bank accounts and specify when and how customer money is to be paid into such accounts and require it to be dealt with, and accounted for, in the prescribed manner;
- (c) require the maintenance of records in relation to such accounts;
- (d) require the submission to the Commission, upon request or at prescribed intervals, of prescribed information, records and documents for the purpose of enabling the Commission to ascertain readily whether the regulations are being complied with; and
- (e) provide for any other matter relating to customer assets.

PART VI

ACCOUNTS, CAPITAL REQUIREMENTS AND AUDIT OF REGULATED PERSONS

63. Accounts and records to be kept.— (1) Every regulated person shall keep such accounting and other records as may be prescribed which shall sufficiently explain the transactions and financial position of all business relating to his licence and enable a true and fair financial statements to be prepared from time to time, and shall keep those records in such manner and form as to enable them to be conveniently and properly audited.

(2) Without limiting the generality of sub-section (1), such accounts and other records shall be maintained as may be prescribed.

(3) The accounting and other records required to be maintained under this section shall be preserved by the regulated person for a period of not less than ten years from the date on which they are made, and shall at all reasonable times be open to inspection by the Commission or by any person appointed by the Commission.

(4) All records shall be maintained in sufficient detail to establish readily whether or not any financial resources regulations are being complied with.

64. Financial resources regulations.— (1) Without prejudice to section 114, the Commission may make regulations requiring a regulated person to have and maintain, in respect of the regulated activity for which they are licensed, the financial resources set by the regulations.

(2) Financial resources regulations under sub-section (1) may—

- (a) require regulated persons to maintain financial resources in accordance with—
 - (i) specified requirements as to the amount in which they are to be maintained;
 - (ii) any other requirements as may be prescribed;
- (b) prescribe the assets, liabilities and other matters to be taken into account under the regulations to determine the financial resources of a regulated person and the extent to which, and the manner in which, they are to be taken into account for that purpose;
- (c) require regulated persons to submit to the Commission, at intervals set out in the regulations, returns of their financial resources and trading activities in a form set by the Commission;
- (d) require regulated persons to submit returns to the Commission in response to a request by the Commission for information relating to their financial resources and any trading activities; and
- (e) provide for any other matter relating to the financial resources of regulated persons.

65. Failure to comply with financial resources regulations.— (1) If a regulated person becomes unable to comply with financial resources regulations, the regulated person shall—

- (a) notify to the Commission that fact;
- (b) in the case of a futures broker, also notify that fact to the futures exchange, of which the regulated person is a TRE certificate holder, and clearing house; and
- (c) cease to conduct regulated activity for which the regulated person is licensed, otherwise than for the purpose of giving effect to an agreement or arrangement permitted under his licence and entered into before the time when it became so aware.

(2) The duties of a regulated person under sub-section (1) shall arise as soon as the regulated person becomes aware, or should, with the exercise of diligence, have become aware, of his inability to comply with the financial resources regulations.

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

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

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

(5) Where the Commission suspends a licence for a specified period under sub-section (4), the suspension shall be for a period not exceeding three months, provided that the Commission may, if it considers it necessary, extend the suspension for such further periods not exceeding three months at any time at the expiry of which the Commission shall either notify in writing to the regulated person that the suspension has expired, or proceed to cancel the licence, as it deems appropriate.

66. Monitoring compliance with financial resources regulations.— (1) The Commission may at any time, by notice in writing served on a regulated person, require the regulated person to satisfy the Commission that the regulated person complies with all of the requirements of the financial resources regulations that apply to the regulated person in such manner as may be prescribed.

(2) Without limiting the generality of sub-section (1), the Commission may exercise any of the powers of an auditor appointed by the Commission under section 70 for the purpose of ascertaining whether a regulated person complies with all of the requirements of the financial resources regulations that apply to the regulated person.

67. Auditor to be appointed.— (1) Within one month after becoming licensed under this Act, a regulated person, other than a representative, shall appoint an auditor approved by the Commission, to perform the functions required of an auditor of a regulated person pursuant to the provisions of this Act and the regulations made hereunder.

(2) An auditor shall not be eligible for appointment under sub-section (1), if he is—

- (a) a director, officer, employee, shareholder, partner or family member of the regulated person;
- (b) a partner or employee of such person; or
- (c) not in compliance with section 254 of the Companies Ordinance, 1984 (XLVII of 1984).

(3) A regulated person shall, within seven days of the appointment of an auditor, notify to the Commission in writing name and address of the auditor.

(4) A regulated person shall, within seven days, notify to the Commission in writing the removal or resignation of an auditor.

68. Audited accounts to be lodged with the Commission.— A regulated person, other than a representative, shall—

- (a) for the financial year from the day on which he commences to carry on a regulated activity; and
- (b) for each subsequent financial year,

prepare proper books of accounts and record of its income and expenditure and assets and liabilities 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 four months after the close of the financial year, together with an auditor's report which shall express opinions on such matters as may also be prescribed.

69. Auditor to report to the Commission in certain cases.— If, during the performance of his duties as auditor for a regulated person, an auditor—

- (a) becomes aware of any matter which in his opinion adversely affects the financial or regulatory position of the regulated person to a material extent; or
 - (b) discovers evidence of a contravention of the financial resources regulations, or of section 62 (customer assets) and section 63 (accounts and records to be kept),
- he shall promptly report it in writing to the Commission and to the regulated person.

70. Power of the Commission to appoint auditor for special Audit. Where the Commission is satisfied that it is in the interest of a regulated person, his customers or in the public interest to do so, it may appoint in writing an auditor to conduct special audit at the expense of the regulated person, to examine, audit and report, either generally or in relation to any matter, on the books, accounts and records of the regulated person and on money, securities or other property held on account of any other person by the regulated person or by a nominee appointed by the regulated person, if—

- (a) the regulated person has failed to lodge audited accounts with the Commission under section 68;
- (b) the Commission has received a report under section 69; or
- (c) the Commission has reason to believe that the regulated person has failed to comply with the financial resources regulations, with section 62 (customer assets) or section 63 (accounts and records to be kept).

THE PAKISTAN CODE

PART VII

INSIDER TRADING

71. Application of this Part. The provisions of this Part shall apply to futures contracts and insiders described in section 73.

72. Prohibition of insider trading.— (1) No person shall indulge in insider trading and any contravention of this section shall be an offence under this Act.

(2) Insider trading shall include—

- (a) an insider person transacting any deal, directly or indirectly, in futures contract using inside information involving futures contract or underlying securities, commodity or financial instruments to which the inside information pertains or using others to transact such deals;

- (b) any other person to whom inside information has been passed or disclosed by an insider person transacting any deal, directly or indirectly, in futures contract using inside information involving futures contract or underlying securities, commodity or financial instruments to which the inside information pertains or using others to transact such deals;
- (c) transaction by any person as specified in clauses (a) and (b) or any other person who knows or ought to have known under normal and reasonable circumstances, that the information possessed and used for transacting any deal is inside information; or
- (d) an insider person passing on inside information to any other person or suggesting or recommending to another person to engage in or dealing in such futures contracts with or without the inside information being disclosed to the person who has dealt in such futures contracts.

(3) The following shall not be deemed as insider trading, namely:—

- (a) any transaction performed under an agreement that was concluded before the time of gaining access to inside information; or
- (b) the disclosure of inside information by an insider person as required under law.

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

73. Inside information.— For the purposes of this Part the expression “inside information” means—

- (a) information which has not been made public, directly or indirectly, relating to futures contract or underlying securities, commodity or financial instruments of a futures contract which, if it were made public, would likely to have an effect on the prices of those futures contracts;
- (b) in relation to persons responsible for the execution of orders concerning futures contracts, information which is conveyed by a client to such person and related to the client's pending orders; or
- (c) information regarding decision or intentions of a person to transact any trade in futures contracts.

74. Insiders.— (1) Insider shall include—

- (i) a sponsor, executive officer, director, partner of a legal person or unincorporated business associations; or
- (ii) employee or agent of any government department or agency; or
- (iii) any person who has inside information; or
- (iv) any person who acquires inside information unlawfully.

(2) Any person who receives inside information, directly or indirectly, including but not limited to, from the persons referred to in sub-section (1) and use such inside information to enter into, or offer to enter into or relating to a futures contract or options on contract.

75. Disclosure of inside information. — (1) Whenever a listed company or a person acting on their behalf, discloses any inside information to any third party in normal exercise of employment, profession or duties, complete and effective public disclosure of that information must be made simultaneously at the futures exchanges:

Provided that this provision shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, regulations, articles of association or contract.

(2) Companies or persons acting on their behalf, shall maintain a list of persons employed, under contract or otherwise in the prescribed manner, who have access to inside information and such companies and persons acting on their behalf shall regularly update this list and send it to the Commission whenever required by the Commission.

(3) Any person who contravenes the provisions of this section and regulations made thereunder shall be deemed to have committed an offence.

PART VIII

OTHER MARKET ABUSES

76. False trading.— (1) Any person who, creates or causes to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in a futures contract on a futures market, or a false or misleading appearance with respect to the market for, or the price of, futures contracts on a futures market shall be deemed to have committed an offence under this Act.

(2) Without limiting the general nature of what constitutes a false or misleading appearance of active trading under sub-section (1), a false or misleading appearance of active trading in futures contract is created for the purpose of this section if a person executes, or holds himself out as having executed, an order for the purchase or sale of a futures contract on a futures market, without having effected a *bona fide* purchase or sale of the futures contract in accordance with the rules and practices of the futures market.

77. Bucketing. Any person who executes or holds himself out as having executed, an order for the purchase or sale of a futures contract on a futures market, without having effected a bona fide purchase or sale of the futures contract in accordance with the regulations and practices of the futures market shall be deemed to have committed an offence under this Act.

78. Manipulation of price of a futures contract and cornering. Any person who, directly or indirectly,—

- (a) manipulates or attempts to manipulate the price of a futures contract that may be dealt in on a futures market, or of any commodity or securities or financial instrument which is the subject of such futures contract; or

- (b) corners, or attempts to corner, any commodity or securities or financial instrument which is the subject of a futures contract,

shall be deemed to have committed an offence under this Act.

79. Employment of fraudulent or deceptive devices. A person shall be deemed to have committed an offence, directly or indirectly, in connection with any transaction with any other person involving trading in futures contract, if he—

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

80. Fraudulently inducing trading in futures contracts. A person shall be deemed to have committed an offence if he, directly or indirectly, induces or attempts to induce another person to trade in a futures contract—

- (a) by making or publishing any statement, promise or forecast or giving any investment advice that is false, misleading or deceptive;
- (b) by any concealment of material facts; 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.

PART IX

SUPERVISION AND INVESTIGATION

81. Power of Commission to call for information.— (1) Notwithstanding anything contained in any other law for the time being in force, the Commission may, by notice in writing in respect of any activity under this Act, require any person to furnish it with such information as it may require during the course of inquiry, inspection or investigation and for the purposes thereof, within such time and verified in such manner as it may specify.

(2) The Commission may, by notice in writing for any purposes under sub-section (1), require any person to appear before it or an officer authorized by the Commission or produce such record and documents as are required by the Commission.

(3) Every person referred to in sub-section (2),—

- (a) shall be bound to answer all reasonable questions put to him and state the truth; and
- (b) may be asked to make a statement of the facts which shall be reduced into writing and signed by him or affixed with his signature or thumb impression.

(4) A Commissioner or an employee to whom any of the functions or powers of the Commission have been delegated under this section may, for the purposes of a proceeding, require anyone—

- (a) to produce before him, and to allow to be examined and kept, any books, accounts or other documents in custody or under control of such person, being documents relating to any matter the examination of which may be considered necessary for disposing of the proceedings by such Commissioner or officer; and
- (b) to furnish such information and documents in his possession relating to any matter as may be necessary for purpose of the proceeding.

(5) The duty to supply information under this section applies not withstanding any other enactment or law in Pakistan.

(6) Any person who does not provide information required by the Commission commits an offence and is liable to be punished under this Act.

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

(2) The Commission may through a written order authorize any person to be the authorized person to exercise the powers of the Commission under this section.

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

- (a) require the licensed person, or any other person whom he believes is in possession of or has under his control, any record or document referred to in sub-section (1), to produce it before him;
- (b) make inquiries of a licensed person, or any other person whom he has reasonable cause to believe has information relating to any record or document, referred to in sub-section (1), concerning any such record or document, or concerning any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the licensed person; and
- (c) inspect and make copies, or take extracts from, and where necessary take possession of, such documents.

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

(5) Any person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence.

83. Investigation.— (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 has been committed under this Act, or under any rule, or under any regulations made under this Act;
- (b) a licensed person may have engaged, or is about to engage in defalcation, fraud, misfeasance or other misconduct in connection with the licensed activity; or
- (c) the manner in which a licensed person has engaged or is engaging or about to engage in the licensed activity is not in the interest of the customer or the public interest, the Commission may in writing direct one or more of its employees or one or more other persons to be the investigator to investigate any of the matters referred to in clause (a), (b) or (c) and to report the results of the investigation to the Commission.

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

- (a) produce to the investigator, within 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 clause (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, which oath 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.

(3) A person commits an offence if, without reasonable explanation, he—

- (a) fails to produce any record or document required to be produced under clause (a) of sub-section (2);
- (b) fails to give an explanation or further particulars required under clause (b) of sub-section (2);
- (c) fails to attend before the investigator as required under clause (c) of sub-section (2);

- (d) fails to answer a question put to him by the investigator under clause (c) of sub-section (2), or in answering the question says anything which he knows to be false or misleading in a material particular or who in so answering recklessly makes a false statement or omits material information known to him; or
- (e) fails to comply with clause (d) of sub-section (2),

shall be liable to be punished under this Act.

84. Destruction of documents. A person commits an offence who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, which he knows or ought to know is relevant to an inspection under section 82 or an investigation under section 83.

85. Powers of investigator in relation to investigations.— (1) An investigator shall, for the purposes of investigations, have all the powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any witness and examining him on oath or affirmation;
- (b) compelling discovery or production of any document or other material object;
- (c) receiving evidence on affidavit; and
- (d) issuing commissions for examination of witnesses and documents.

(2) Any person who contravenes the requirements of clause (a), (b) or (c) of sub-section (1) and if such contravention is deliberate the investigator may, with prior approval of the Commission, make an application to the Court for attachment of his property or require him to furnish security for his appearance.

(3) Any proceeding before the investigator shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

(4) Any contravention of or non-compliance with any orders or directions of the investigator exercising powers of a court under sub-section (1) shall be an offence punishable under section 104.

PART X

POWERS OF INTERVENTION BY COMMISSION IN RELATION TO LICENSED PERSONS

86. Scope of powers under this Part.— (1) The powers conferred on the Commission under this Part may be exercised in relation to any licensed person and its customers if it appears to the Commission that—

- (a) exercise of the powers is desirable for the protection of investors or in the public interest;

- (b) he is not a fit and proper person to be a licensed person; or
- (c) the licensed person has contravened or failed to comply with any provision of, or requirement under, this Act, any rule, or any regulation made by the Commission under this Act or, in purported compliance with any such provision or requirement, has furnished to the Commission information that is false, inaccurate or misleading.

(2) The Commission for reasons to be recorded may on its own motion exercise its powers conferred by section 87, 88 or 89.

(3) For the purposes of this section, the Commission may take into account any matters that could be taken into account in deciding whether to suspend or revoke a licence or take other punitive actions.

(4) The powers conferred on the Commission by this Part may be exercised in relation to a person whose licence has been suspended or revoked or other punitive action has been taken against him, whether or not the suspension or revocation or other punitive action is the subject of appeal.

87. Restriction of business. (1) The Commission may, after recording reasons in writing, prohibit a licensed person and its customers from doing any one or more of the following, namely:—

- (a) entering into transactions of a specified description, circumstances and extent or otherwise; or
- (b) soliciting business from persons of a specified description or otherwise; or
- (c) carrying on business in a specified manner or otherwise.

(2) No prohibition under this section shall be made unless it relate to transactions entered into in connection with or for the purposes of a regulated activity.

88. Restriction on dealing with property. The Commission may, after recording reasons in writing, as regards any property whether in Pakistan or elsewhere and whether it is the property of a licensed person or not,—

- (a) prohibit a licensed person from disposing of such property or prohibit him from dealing with it in a specified manner or otherwise; or
- (b) require a licensed person to deal with such property in, and only in, a specified manner.

89. Maintenance of property.— (1) The Commission may require a licensed person to maintain in Pakistan property of such value as appears to the Commission to be desirable with a view to ensuring that the licensed person will be able to meet his liabilities in respect of his regulated activity.

(2) The Commission may direct that, for the purposes of any requirement under this section, property of any specified class or description shall or shall not be taken into account.

90. Rescission and variation of prohibition or requirement. The Commission may, either of its own motion or on the application of a licensed person or its customers on whom a prohibition or requirement has been imposed under this Part, 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 continue in force or, as the case may be, that it should take effect or continue in force in a different form.

91. Notices.— (1) The power to impose, rescind or vary a prohibition or requirement under this Part shall be exercisable by written notice served by the Commission on the licensed person concerned, and any such notice shall take effect on such date as is specified in it.

(2) If the Commission refuses to rescind or vary a prohibition or requirement on the application of the licensed person to whom it applies, it shall serve notice on him to that effect.

(3) A notice imposing a prohibition or requirement, varying a prohibition or requirement otherwise than on the application of the licensed person to whom it applies, and any notice under sub-section (2), shall state the reasons for which the prohibition or requirement has been imposed or varied or, as the case may be require, why the application for variation or rescission was refused.

(4) The Commission may give public notice of any prohibition or requirement imposed by it under this Part and of any rescission or variation thereof and any such notice may, if the Commission considers necessary, include a statement of the reasons for the prohibition, requirement, variation or rescission.

92. Winding up orders.— (1) If, in the case of a licensed person which is a company, it appears to the Commission that it is desirable for the protection of customers that the company should be wound up under the Companies Ordinance, 1984 (XLVII of 1984), the Commission may present a petition for it to be wound up under that Ordinance on the ground that it is just and equitable that it should be wound up, and that Ordinance shall apply to such petition as it applies in relation to a petition presented under that Ordinance.

(2) Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984),—

- (a) a licensed person shall not file a petition for winding up unless it satisfies the Commission in the manner prescribed that it has settled all outstanding investors claims as per default regulations and has obtained prior approval of the Commission and the Commission may, in the interest of the public or interest of investors, impose such conditions as it deems appropriate;
- (b) the Court may refuse to entertain petition under sub-section (1) for winding up of a company, if the Court is satisfied that—
 - (i) requirements of clause (a) have not been fulfilled;
 - (ii) petitioner intends to avoid or prejudice investigation of offences under this Act; or
 - (iii) any other ground exists that the Court deems it fit in the facts and circumstances of the case for passing such order.

93. Orders of the Court.— (1) Where, on the application of the Commission, it appears to the Court that a licensed person has contravened any provision of this Act or any condition of his licence, or is about to do an act that, if done, would be such a contravention, the Court may, without prejudice to any order it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders, namely:—

- (a) an order restraining the licensed person from acquiring, disposing of, or otherwise dealing with any property specified in the order;
- (b) an order appointing a person to administer the property of the licensed person;
- (c) an order declaring a contract to be void or voidable;
- (d) for the purpose of securing compliance with any other order under this section, an order directing a licensed person to do or refrain from doing any act specified in the order; or
- (e) any ancillary order which the Court considers necessary in consequence of the making of any other order under this section.

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

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

(4) The Court may, of its own motion or on the application of an interested party, reverse, vary or discharge an order made by it under this section or suspend the operation of such an order.

PART XI

DISCIPLINE OF LICENSED PERSONS

94. Disciplinary action in respect of licensed persons.— (1) Subject to section 98, where—

- (a) a licensed person is, or was at any time, guilty of misconduct; or
- (b) the Commission is of the opinion that a licensed person is not a fit and proper person to remain a licensed person,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case, namely:—

- (i) suspend his licence, whether in relation to all or any of the regulated activities for which he is licensed, for such period or until the occurrence of such event as the Commission may specify; or

- (ii) cancel his licence whether in relation to all or any of its activities for which he is licensed;
- (iii) publicly reprimand the licensed person; or
- (iv) prohibit the licensed person from applying for licensing under this Act for such period or until the occurrence of such event as may be specified by the Commission.

(2) Subject to section 98, where a licensed person is, or was at any time, guilty of misconduct, the Commission may make one or more of the following orders, separately or in addition to any power exercisable under sub-section (1), that the licensed person shall pay to the Commission by way of penalty such sum—

- (a) not exceeding fifty million rupees;
- (b) not exceeding the amount of any profit gained or loss avoided by the licensed person as a result of the misconduct in question;
- (c) appropriate to reimburse the Commission for the costs and expenses it has reasonably incurred in relation to the investigation of his conduct.

(3) A licensed person ordered to make a payment under sub-section (2) shall pay the sum to the Commission within 15 days, or such further period as the Commission may specify by notice under section 98, after the order has taken effect.

(4) A licensed person commits an offence if he fails to comply with an order under sub-section(2).

(5) In this section “misconduct” means

- (a) a contravention of any of the provisions of this Act, the rules or regulations made under this Act;
- (b) a contravention of any of the terms or conditions of a licence granted under this Act; or
- (c) failure to comply with any direction of the Commission made under this Act; or
- (d) an act or omission by a licensed person in relation to his activity which, in

opinion of the Commission, is or is likely to be prejudicial to the public interest, and “guilty of misconduct” shall be construed accordingly.

(6) For the avoidance of doubt, any disciplinary action taken by the Commission under this section or section 98 shall be without prejudice to any other action, whether civil or criminal, that may be taken against the licensed person in respect of the; same conduct.

(7) In determining whether a licensed person is a fit and proper person for the purposes of clause (b) of sub-section (1), the Commission shall have regard to the matters specified in section 95.

95. Determination of fit and proper criteria.— (1) Subject to sub-section (2), the Commission shall prescribe the fit and proper criteria for licensed persons or, in case of company, members of the board of directors or management.

(2) In considering whether a licensed person, or in case of company a member of the board of directors or management, is a fit and proper person for the purposes of this Act, the Commission shall, in addition to any other matter that the Commission may consider relevant, have regard to—

- (a) the financial status or solvency;
- (b) the educational or other qualifications or experience;
- (c) the ability to carry on its activity competently, honestly and fairly; and
- (d) the reputation, character, reliability and financial integrity of—
 - (i) where an applicant or the regulated person is an individual, the individual himself; or
 - (ii) where an applicant or the regulated person is a company, the company and any director or officer of the company.

(3) Without limiting generality of sub-section (1), the Commission may, in considering whether an applicant or a licensed person is a fit and proper person, take into account—

- (a) any information in possession of the Commission whether provided by an applicant or the licensed person 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 an applicant or the licensed person for the purposes of his regulated activity; or
 - (ii) where an applicant or the licensed person is a company in a group of companies,—
 - (A) any other company in the same group of companies; or
 - (B) any substantial shareholder, director or officer of the company or any company referred to in sub-clause (A);

Explanation.— In this sub-clause, “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;

- (b) whether the regulated person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements applicable to him; and

- (c) the state of affairs of any other business which an applicant or the licensed person carries on or proposes to carry on.

96. Other circumstances for disciplinary action in respect of licensed persons.— (1)

Subject to section 98, the Commission may cancel the licence of any person whether in relation to all or any of the activities for which he is licensed or suspend his licence, whether in relation to all or any of the activities for which he is licensed, for such period or until the occurrence of such event as the Commission may specify, if,—

- (a) where the licensed person 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 Pakistan or elsewhere;
 - (iii) has been by a court of competent jurisdiction adjudged as a defaulter in repayment of a loan in a sum exceeding one hundred thousand rupees;
 - (iv) is convicted, whether in Pakistan or elsewhere, of fraud or other offences involving dishonesty or moral turpitude;
 - (v) is in breach of this Act, any rules or any regulations made by the Commission or a futures exchange under this Act;
 - (vi) contravenes or fails to comply with any condition applicable in respect of the licence;
 - (vii) fails to comply with a direction of the Commission;
 - (viii) fails to provide the Commission with information required, or provides false or misleading information;
 - (ix) ceases to carry on the business for which he is licensed;
 - (x) is the holder of a representative's licence and the licence of the principal to whom he is accredited is cancelled or suspended; or
 - (xi) by reason of any other circumstances, is no longer a fit and proper person to hold a licence;
- (b) where the regulated person is a company,—
- (i) the company goes into liquidation or is ordered to be wound up;
 - (ii) a receiver of all or a substantial part of the property of the company is appointed;
 - (iii) the company ceases to carry on the business for which it is licensed;

- (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 one person who holds a representative's licence granted under section 49;
- (vii) the company is in breach of this Act, any rule, or any regulation made under this Act;
- (viii) fails to comply with a direction 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 section, the suspension shall be for a period not exceeding three months, provided that the Commission may, if it considers it necessary, extend the suspension for such other period as may be specified by the Commission at the expiry of which the Commission shall either restore the licence or proceed to cancel the licence, as it deems appropriate.

(3) The Commission may cancel or suspend a licence at the request of the licensed person.

(4) For the purposes of sub-clause (ix) of clause (a) of sub-section (1) and sub-clause (iii) of clause (b) of sub-section (1), a licensed person shall be deemed to have ceased to carry on the business for which he is licensed, if—

- (a) he has ceased to carry on the business for which he is licensed for more than thirty days unless he has obtained prior approval of the Commission not to do so; or
- (b) he has ceased to carry on business under a direction issued by the Commission under section 54.

(5) Where the Commission suspends or cancels the licence of a licensed person under this section, it shall cause notice of that fact to be disseminated in such manner as the Commission deems appropriate.

97. Effect of cancellation or suspension of licence.— (1) The cancellation or suspension of a licence under this Act does not operate so as to—

- (a) avoid or affect an agreement, transaction or arrangement entered into by the licensed person on the futures market of a futures exchange where the

agreement, transaction or arrangement was entered into before the revocation or suspension; or

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

(2) Where a licence is cancelled or suspended under this Part, the Commission may by notice in writing, subject to such conditions as it may specify therein,—

- (a) require the regulated person to transfer to, or to the order of, his customer such record relating to customer property or to the affairs of the customer held at any time for the customer, in such manner, as the Commission may specify in the notice; or
- (b) permit the licensed person to —
 - (i) in the case of a cancellation, carry on business operations for the purpose of closing down the business connected with the cancellation; or
 - (ii) in the case of a suspension, carry on only essential business operations for the protection of interests of customers during the period of suspension.

98. Procedural requirements for exercise of disciplinary powers under this Part.— (1) The Commission shall not exercise any power under section 94 or 96 without first giving the licensed person in respect of whom the power is to be exercised a reasonable opportunity of being heard:

Provided that where the Commission is satisfied that delay in the suspension of licence shall cause risk of serious financial damage to the customer of that licensed person or is detrimental to the interest of investors or the public in general, the Commission may, after recording reasons in writing, immediately suspend its TRE certificate till the time an opportunity of hearing is provided to the licensed person and a final decision is taken within a period of not more than thirty days.

(2) The Commission may prescribe the manner in which the licensed person shall be given an opportunity to be heard.

(3) Where the Commission decides to exercise any power under section 94 or 96, the Commission shall inform the licensed person 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) in so far as applicable, the duration and terms of any cancellation or suspension to be imposed under the decision;
- (d) in so far as applicable, the terms in which the licensed person is to be reprimanded under the decision; and

- (e) in so far as applicable, 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 XI

MISCELLANEOUS

99. Indemnity.— No suit, prosecution, complaint, criminal proceeding or other legal proceedings or action in damages shall lie against the Commission, Commissioners, officers and employees of the Commission for anything in good faith done or omitted in the exercise or performance of any function, power or duty conferred or imposed by or under this Act or rules and regulations made thereunder.

100. Rights of applicants and holders of licences.— (1) The Commission shall not—

- (a) refuse an application for the grant of any licence in respect of any activity under this Act; or
- (b) cancel or suspend any licence granted under this Act,

without first giving the applicant or licence holder as the case may be, an opportunity of being heard.

(2) The Commission shall, if it refuses an application, notify the applicant in writing of the refusal.

(3) The Commission shall, if it cancels or suspends a licence, notify the licence holder in writing of the cancellation or suspension and of—

- (a) the date on which the cancellation or suspension takes effect; and
- (b) the duration of a suspension, or the event which will terminate it.

(4) The manner in which a person shall be given an opportunity to be heard may be prescribed.

101. Civil liabilities.— (1) Every contract made in contravention of any provision of this Act or any rules or regulations made thereunder shall be voidable as regards the rights of any party to the contract contravening such provision or any person not being a party to the contract who acquires any right under the contract with actual knowledge of the facts by reason of which its making or performance was in such contravention and any person affected by such contract not being himself a party to the contravention may sue to rescind any such contract to the extent it has been consummated or for damages when rescission is not possible.

(2) Any person who makes or causes to be made, in any application, report or document filed with the Commission or a futures exchange pursuant to this Act or any rules or regulations made thereunder, any statement which was false or misleading with respect to any material fact, at the time and in the light of the circumstances under which it was made, shall be liable to any person who has purchased or sold a security in reliance on such statement for damages caused by such reliance, without regard to the presence or absence of any contractual relationship between the two, unless the person

who made or caused to be made the application, report or document proves that he acted in good faith and had no knowledge or reasonable ground to believe that the statement was false or misleading.

(3) Any person who participates in any act or transaction in contravention of the provisions contained in Part VIII of this Act (market abuse) shall be liable to any person who has purchased or sold a security in reliance on such act or transaction for damages caused by such reliance, without regard to the presence or absence of any contractual relationship between the two, unless the person so contravening proves that he acted in good faith and had no knowledge or reasonable ground to believe that there was any fraud, untruth or omission.

(4) Every person who directly or indirectly exercises control over the affairs of any person liable under this section shall also be liable to the same extent as the person whose affairs are so controlled, unless he proves that he acted in good faith and did not directly or indirectly induce the act or acts giving rise to the cause of action.

(5) Liability under this section shall be joint and several and every person who becomes liable may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment, unless the plaintiff was, and the defendant was not, guilty of fraudulent mis-representation.

(6) No suit for the enforcement of any right or remedy provided for in this section shall lie after the expiry of three years from the date of the accrual of the cause of action.

(7) The rights and remedies provided for by this Act shall be in addition to any other rights and remedies available under any other law for the time being in force.

102. Standard of proof. Where it is necessary for the Commission to establish or to be satisfied for the purposes of this Act, other than provisions relating to criminal proceedings, that a regulated person has contravened—

- (a) any provision of this Act or any rules or regulations made under this Act;
- (b) any notice or requirement given or made under or pursuant to any provision of this Act;
- (c) any of the terms and conditions of a licence granted under this Act; or
- (d) any other condition imposed under or pursuant to any provision of this Act,

it is sufficient for the Commission to establish, or to be satisfied as to, the matter referred to in clauses (a), (b), (c) or (d), as the case may be, on the standard of proof applicable to civil proceedings in a summary manner in a court of law.

103. Futures contracts not gaming or wagering contracts.— Notwithstanding anything contained to the contrary in any other enactment, rule or law in Pakistan, a futures contract traded on the futures market of a futures exchange shall be lawful for all purposes and shall not constitute a gaming or wagering contract.

104. Offences and penalties.— (1) Any person who commits an offence under section 72 (insider trading) shall be liable—

- (a) in the case of an individual, to imprisonment of either description for a term which may extend to three years or to a fine which may extend to two hundred million rupees or three times the amount of gain made or loss avoided by such person, or loss suffered by another person, whichever amount is higher; and
- (b) in the case of a company, to a fine which may extend to three hundred million rupees or three times the amount of gain made or loss avoided by such company, or loss suffered by another person, whichever amount is higher.

(2) Any person who commits an offence under sections 76, 77, 78, 79 and 80 (other market abuses under (PART VIII) shall be liable—

- (a) in case of an individual to imprisonment of either description for a term which may extend to three years or a fine not exceeding two hundred million rupees or both; and
- (b) in the case of a company, to a fine which may extend to three hundred million rupees.

(3) Any person who is in contravention of the provisions of sections 3, 22 or sub-section (I) of section 47 (operating without a licence or other authority) shall be liable—

- (a) in the case of an individual, to a fine not exceeding two hundred and fifty million rupees or imprisonment for a term not exceeding three years or to both;
- (b) in the case of a company, to a fine not exceeding four hundred million rupees; and
- (c) in the case of a continuing offence, to a further fine not exceeding two hundred thousand rupees for every day or part thereof during which the offence continues.

(4) Notwithstanding sub-sections (1), (2), (3) and (4), any person who—

- (a) contravenes or fails to comply with any provision of this Act, or of any rules or of any regulations made under this Act;
- (b) furnishes or produces any return, documents or statement for the purposes of this Act or any requirement imposed under the provisions of this Act or of any rules or regulations made under this Act the contents of which, to his knowledge, are untrue, incorrect or misleading; or
- (c) obstructs or contravenes or does not comply with any order or direction of the Commission or any person or investigator thereof authorized for issuance of such order, direction in the performance of his duties under this Act,

the accused person shall be liable to pay, by way of penalty,—

- (i) in the case of an individual, such sum which may extend to one hundred million rupees; and

- (ii) in the case of a company, such sum which may extend to two hundred million rupees.

(5) Where the offence under sub-section (4) involved fraud, deceit or deliberate disregard of the regulatory requirement the accused person shall be liable to pay by way of penalty,—

- (a) in the case of an individual, such sum which may extend to one hundred million rupees; and
- (b) in the case of a company, such sum which may extend to two hundred million rupees.

(6) Where the offence under sub-section (4) involved fraud, deceit or deliberate disregard of the regulatory requirement and such offence resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the offence, the accused person shall be liable to pay, by way of penalty,—

- (a) in the case of an individual, such sum which may extend to one hundred million rupees or twice the amount of loss caused or gain made, whichever is higher; and
- (b) in the case of a company, such sum which may extend to two hundred million rupees or twice the amount of loss caused or gain made, whichever is higher.

105. Penalty to be imposed by the Commission. Where a penalty is provided for any offence, contravention of or default in complying with, any of the provisions of this Act, rules or regulations made under this Act such penalty shall be imposed by the Commission after providing a reasonable opportunity of being heard to the party.

106. Appeal.— (1) Any person aggrieved by the final decision of the Commission may, within sixty days of the decision communicated to him, prefer appeal to the Court.

(2) The Court may, on an appeal made to it under sub-section (1), accept, set-aside or vary decision of the Commission or make such other order as the interests of justice require.

Explanation.— For the purposes of sub-section (1), “final decision of the Commission” means a decision of Appellate Bench of the Commission under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

(3) The Court shall, at the stage of admission of the appeal or at any time thereafter on the application of the aggrieved person and after giving due notice to the Commission, decide by means of a reasoned order whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case:

Provided that the admission of the appeal shall not per se operate as a stay and nor shall any stay be granted therein unless the Commission has been given an opportunity of being heard.

(4) Notwithstanding anything contained in any other law, the hearing of appeal shall continue day-to-day, unless sufficient cause has been shown by the parties jointly or severally which is beyond

control of the parties, the Court may adjourn the hearing for maximum of two dates and such adjournment shall not be more than fifteen days at any one time or for more than thirty days in all.

(5) Where on third hearing any party fails to appear and address arguments before the Court the Court shall proceed and decide appeal on merits and it may be deemed that such party has relinquished its rights to address arguments.

107. Recovery of penalties.— (1) Any penalty imposed by the Commission in exercise of its powers under this Act or any rules or any regulations made under this Act shall be payable to the Commission and may be recovered by the Commission as a decree for the payment of money in case where the person aggrieved by such order has—

- (a) preferred an appeal under section 106 and the Court upheld the final order of the Commission and it will automatically be converted into execution proceeding and no fresh notices shall be issued to appellant; or
- (b) not preferred an appeal to the Appellate Bench of the Commission under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (Act XLII of 1997) and the Court on application of the Commission has confirmed and allowed conversion or initiation of execution proceedings after notices to the parties as deemed appropriate by the Court.

(2) The Court shall exercise all the powers of executing court as provided in the Code of Civil Procedure, 1908 (Act V of 1908), for the purposes of recovery of penalties:

Provided that the Court may, for reasons to be recorded, dispense with any procedure in the Code of Civil Procedure, 1908 (Act V of 1908), and follow such procedure as it may deem fit in the circumstances of the case for expeditious disposal.

(3) The executing Court may attach any immovable property or sale of any movable property, including bank accounts, of the person or company on whom a penalty has been imposed under this Act by the Commission and any transaction or attempt to alienate, transfer, encumber or mortgage such property shall be void, illegal and without any lawful authority.

(4) All government departments, authorities, bodies, private entities, housing societies or schemes, by whatever name called, banks and any other concerned entity shall on the orders of the Court be bound to assist the Commission in providing details of moveable or immovable property of judgment debtor.

108. Cognizance of offences. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898) no court shall take cognizance of any offence punishable with imprisonment or imprisonment in addition to fine, under this Act except on a complaint in writing of the facts, constituting the offence, by an officer authorized in this behalf by the Commission signed by a Commissioner and no court inferior to that of Court of Session shall try any such offence.

109. Prosecution of offences by Commission.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), all prosecution of offences under this Act or any rules and regulations made under this Act against any person shall be conducted by special public prosecutor appointed by the Commission.

(2) On receipt of complaint the Court shall issue summons as for the attendance of the accused in the first instance and on failure of the accused to appear before the Court, warrant of arrest shall be issued by the Court.

Explanation.— For the purposes of this section, the term “complaint” shall include the report in writing of the investigation officer of the Commission constituting facts of the offence.

(3) Personal attendance of the officer authorized by the Commission to file a complaint before the Court trying the offence shall not be necessary on each date during the trial in the presence of special public prosecutor referred to in sub-section (1).

(4) The Court shall adopt procedure provided for under Chapter XXII-A of the Code of Criminal Procedure, 1898 (Act V of 1898) and all prosecutions before the Court under this Act shall be disposed of and the judgment pronounced, as expeditiously as possible.

(5) The hearing of the matters referred to in sub-section (1) shall not be adjourned except for sufficient cause to be recorded, or for more than fourteen days at one time and Court may impose such cost as it deems fit.

(6) The Court may, for reasons to be recorded, dispense with any procedure in the Code of Criminal Procedure, 1898 (Act V of 1898) and follow such procedure as it may deem fit in the circumstances of the case for expeditious disposal of the complaint.

110. Register of notifications issued by the Commission. The Commission shall maintain and make available for general public on its website a register of notifications issued by the Commission under this Act.

111. Liability of directors for offences by companies.— (1) Where an offence under this Act or any rules or any regulations made under this Act committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the company, that officer as well as the company shall be guilty of that offence and the officer of the company shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed in accordance with the instructions of any other person, not being a professional adviser, sub-section (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the company.

(3) In this section “officer” means a director, member of the committee of management, chief executive, manager, secretary or any person who was purporting to act in any such capacity.

112. Liability of licensed person for acts of representative. For the purposes of this Act, an act, omission or failure of a representative, employee or other person acting for or on behalf of a licensed person within the scope of his office or employment shall be deemed to be the act, omission or failure of the licensed person as well as of the representative, employee or other person.

113. Securities acquired in good faith.— (1) A person who, without fraud and for a lawful consideration, becomes the possessor of a certificate of an equity security, scrip, debenture, debenture stock or bond, and who is without notice that the title of the person from whom he derived his own title was defective shall hold such certificate and all rights attached thereto free from any defect of title of prior parties and free from defences available to prior parties among themselves.

(2) A futures exchange may regulate the documentation, procedures and guarantees required to transfer property in securities and the effects thereof on the respective rights and liabilities of the parties and such regulations, if approved by the Commission, shall constitute binding and enforceable terms and conditions of contracts effected on the exchange, shall govern the rights and liabilities of the parties thereto and shall govern the rights and liabilities with respect to transfers of shares on its books of the issuer of listed securities notwithstanding any provisions to the contrary contained in the Contract Act, 1872 (IX of 1872), the Negotiable Instruments Act, 1881 (XXVI of 1881), the Transfer of Property Act, 1882 (IV of 1882) or the Companies Ordinance, 1984, (XLVII of 1984) or any other law for the time being in force.

114. Power to make regulations.— (1) In addition to the powers conferred by any other section, the Commission may make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of sub-section (1), the Commission may make regulations for—

- (i) applications for licences, the issue of licences and incidental matters;
- (ii) the standards for the qualifications, experience and training of applicants for licensing under Part IV;
- (iii) the conditions for the conduct of business on a futures market;
- (iv) capital requirements in relation to any regulated activity or other activity licensed or authorized under this Act, with the power to the Commission to vary such capital requirements by order as the Commission deems fit;
- (v) futures broker's financial responsibility whether by way of minimum capital or a ratio between net capital or aggregate indebtedness or both;
- (vi) classification of futures brokers into different categories and conditions attached thereto;
- (vii) compulsory provision by futures exchanges of a centralized customers protection compensation fund;
- (viii) short selling;
- (ix) registration and operation of quotation and trade reporting systems;
- (x) misalignment of incentives and conflict of interest between regulated persons, its employees and its clients;
- (xi) processing and determination of investor complaints;
- (xii) form and content of contract confirmation notes, customer agreements and risk disclosure statements;

- (xiii) form, content, distribution and publication of written, printed or visual material and advertisements for or with respect to any regulated activity, investment or trading in futures contract;
- (xiv) persons who produce or disseminate research concerning listed securities or issuers of listed securities and persons who produce or disseminate other information recommending or suggesting investment strategy, intended for distribution channels or for the general public;
- (xv) information to be contained in auditors' reports required to be lodged under this Act on the annual accounts of regulated persons;
- (xvi) appointment remuneration and responsibilities of an auditor appointed under this Act and the costs of an audit carried out under this Act;
- (xvii) display of licences and the issue of duplicates;
- (xviii) making of annual or other regular returns to the Commission by regulated persons;
- (xix) disclosure of conflict of interest by directors and management of regulated persons;
- (xx) appointment and conduct of directors and management of licensed person and regulated person;
- (xxi) fit and proper criteria for director, majority shareholders and management of licensed person and regulated person;
- (xxii) pre-emptive measure and actions for market monitoring and surveillance, promoting level playing field for investors and public at large;
- (xxiii) special or general inspection and examination and investigation and audit of licensed person or regulated person;
- (xxiv) orderly conduct, prohibition of fraudulent activities and unfair trade practices and prevention of market abuse in futures markets;
- (xxv) code of conduct for futures brokers, futures advisers and analysts;
- (xxvi) effective surveillance and monitoring to detect and prevent insider trading and market abuse practices;
- (xxvii) (effective know your customer and customer due diligence policies and procedures and other matters ancillary to anti-money laundering;
- (xxviii) manner of outsourcing important functions by a futures exchange and clearing house or a central depository;

- (xxix) mechanism for conducting inspections and investigations of regulated persons in coordination with futures exchanges clearing houses and central depositories including establishment of specialized entity for this purpose;
- (xxx) manner and procedure for providing applicants and holders of licence opportunity of hearing;
- (xxxi) conditions for trading of Shariah compliant contracts on the futures market; and
- (xxxii) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

(3) For avoidance of doubt, the powers of the Commission to make regulations under this section are in addition to and not in derogation of any other power of the Commission to make regulations under any provision of this Act or any other Act.

(4) Before any regulations are made or amended under this Act the Commission shall publish a draft of the regulations in the official Gazette and place it on its website for eliciting public opinion on the draft regulations for a period of not less than fourteen days starting from the date of its placement on the website.

(5) Every regulation made or amended by the Commission shall be published in the official Gazette and shall come into effect on such date as may be specified in the notification.

115. Power of the Commission to issue directions to a futures exchange and clearing house. — (1) In addition to the powers conferred by any other section and where the Commission considers it necessary or expedient in the public interest or for the protection of investors or proper administration of futures exchanges and clearing houses, it may, notwithstanding anything contained in any other law for the time being in force, issue directions by notice in writing either of a general or specific nature.

(2) Without prejudice to the generality of sub-section (1), any such direction may cover areas, including but not limited to,—

- (a) enhanced corporate governance policies;
- (b) specified structure of board of directors to ensure independence and avoidance of conflict of interest;
- (c) stringent qualification and fit and proper criteria of directors;
- (d) stringent qualification and fit and proper criteria of its senior management officers;
- (e) enterprise risk evaluation and measurement and mitigation measures; (f) segment risk evaluation and measurement and mitigation measures;
- (g) risk mitigation against frauds, forgeries;
- (h) internal audit, internal controls and compliance;

- (i) composition and terms of reference of committees, including but not limited to, audit and compliance, human resources, information technology security;
- (j) punitive and disciplinary actions by the Commission against board of directors and management in case of non-compliances or violations of any law for the time being in force, rules, regulations and directives issued thereunder;
- (k) distribution of dividends, retention and reinvestments of profits towards development, protection of stakeholders and investing public, insurance against risks and threats; and
- (l) any other matter as the Commission may deem appropriate,

and the futures exchange and clearing house shall comply with any such direction.

116. Power to make rules.— (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of sub-section (1), the Federal Government may make rules for—

- (a) establishment and orderly conduct of a centralized know your customer organization and matters related thereto;
- (b) all other matters or things which by this Act are required or which are necessary or expedient to give effect to this Act.

(3) The power to make rules under this section shall be subject to the condition of previous publication and before making any rules the draft thereof shall be published in the official Gazette and also be placed on the website of the Commission for soliciting public opinion thereon within a period of not less than thirty days starting from the date of its placement on the website.

117. Forms. The Commission may, by notice in the official Gazette, specify Forms that are required to be used for any purpose under this Act or the rules or regulations made under this Act.

118. Codes, guidelines. The Commission may, by notification in the official Gazette, issue such codes, guidelines or regulatory or policy statements as it considers appropriate for providing guidance in relation to—

- (a) any of its regulatory objectives under this Act;
- (b) any matter relating to any of the functions of the Commission under this Act;
- (c) proving guidance to licensed persons; and
- (d) the operation of any provision of this Act.

119. Delegation of the Commission's functions or powers.— (1) The Commission may, subject to such conditions and limitations as it deems fit to impose, delegate any of its functions or powers under this Act to one or more Commissioners or any officer of the Commission.

(2) A delegation under this section shall not prevent the concurrent performance, or exercise, by the Commission of the function or power so delegated.

120. Act not to affect the powers of the State Bank of Pakistan. Nothing in this Act shall be read or construed as diluting, interfering with or affecting the powers and functions of the State Bank of Pakistan under any law.

121. Act to override other laws. The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force.

122. Removal of difficulties. If any difficulty arises in giving effect to any provisions of this Act, the Federal Government may make such orders as may appear to be necessary for the purpose of removing the difficulty.

123. Transitional provisions.— (1) Subject to sub-section (2), a company that immediately before the commencement of Part II is registered as a commodity exchange under the Securities and Exchange Ordinance, 1969 (XVII of 1969), shall be deemed to be licensed as a futures exchange under this Act for a period of one year from such commencement.

(2) Where, within one year from the commencement of Part II, the company applies to be licensed as a futures exchange under this Act, it shall be deemed to have been so licensed until the licence applied for is granted or until notice in writing of the refusal of the Commission is served on the company.

(3) Subject to sub-sections (4) and (5), a company that immediately before the commencement of Part II is registered as a securities exchange under the Securities and Exchange Ordinance, 1969 (XVII of 1969), shall be deemed to have been licensed as a futures exchange under this Act for a period of one year from such commencement.

(4) The deemed licence under sub-section (3) shall extend only to the trading of futures contract in securities which contract shall require approval of the Commission under this Act.

(5) Where, within one year from the commencement of Part II, the company referred to in sub-section (3) applies to be licensed as a futures exchange under this Act, it shall be deemed to have been so licensed until the licence applied for is granted or until notice in writing of the refusal of the Commission is served on the company.

(6) A company that, immediately prior to the commencement of Part III of this Act, is registered as a clearing house under the Clearing Houses (Registration and Regulation) Rules, 2005, shall thereupon be deemed to be licensed under this Act as a clearing house till the time its existing certificate of registration remains valid and shall thereafter be required to obtain a licence under this Act;

(7) Subject to sub-sections (9) and (10), a person who immediately before the commencement of Part IV is registered as a broker under Securities and Exchange Ordinance, 1969 (XVII of 1969)

shall be deemed to have been licensed as a futures broker under this Act for futures contract based on securities for a period of one year from such commencement.

(8) Subject to sub-section 10, a person who immediately before the commencement of Part IV is registered as a broker under the Commodities Exchange and Futures Contract Rules, 2005 shall be deemed to have been licensed as a futures broker under this Act for futures contract based on commodity or financial instruments for a period of one year from such commencement.

(9) The deemed licence under sub-section (8) shall extend only to the trading of futures contracts in securities.

(10) Where, within one year from the commencement of Part IV, the registered broker referred to in sub-section (7) or a registered broker referred to in sub-section (8) applies to be licensed as a futures broker under this Act, he shall be deemed to have been so licensed until the licence applied for is granted or until notice in writing of the refusal of the Commission is served on the company.

(11) From the commencement of this Act, all rules and regulations made by the Federal Government or the Commission, as the case may be, under the Securities and Exchange Ordinance, 1969 (XVII of 1969) and which are in force immediately prior to the commencement of this Act, which have not been specifically repealed by rules or regulations made under this Act, shall continue to be in force and have effect as if they have been made by the Federal Government or the Commission, as the case may, under this Act.

(12) From the commencement of this Act, regulations made by commodity exchange licensed under the Securities and Exchange Ordinance, 1969 (XVII of 1969) and which are in effect immediately prior to the commencement of this Act and which have not been specifically repealed by regulations made under this Act, shall continue to be in force and have effect as if they have been made by the futures exchange under this Act.

(13) Any condition that has been attached by the Commission to a person registered under the Securities and Exchange Ordinance, 1969 (XVII of 1969), and that is in force immediately prior to the commencement of this Act, shall be treated as being attached to any licence which is regarded as subsisting by virtue of these transitional provisions.

(14) Anything done, actions taken, instruments made, proceedings initiated and instituted, processes or communications issued and powers conferred, assumed or exercised by the Commission under the Securities and Exchange Ordinance, 1969 (XVII of 1969) shall, on the coming into operation of any provision of this Act, be deemed to have been validly done, made, taken, initiated, conferred, assumed and exercised.

(15) Every notification, order or directive, circular, code or guideline issued by the Commission which is in force on the coming into operation of any provision of this Act shall continue to be in force and have effect as if they have been issued by the Commission under this Act.

124. Repeal and saving.— (1) The Securities and Exchange Ordinance, 1969 (XVII of 1969) shall, hereinafter called as repealed Ordinance, stand repealed from the date of coming into force of this Act or any part of this Act:

Provided that repeal of repealed Ordinance shall not—

- (a) revive anything not in force at the time at which the repeal takes effect; or
- (b) affect the previous operation of the repealed Ordinance or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said repealed Ordinance; or
- (d) affect any penalty imposed, forfeiture made or punishment awarded in respect of any offence committed under the repealed Ordinance;
- (e) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such inspection, investigation, prosecution, legal proceeding or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

(2) Notwithstanding the repeal of the repealed Ordinance,—

- (a) every notification, registered commodity futures contract, order or exemption issued, made or granted under the repealed Ordinance shall have effect as if it had been issued, made or granted under the corresponding provision of this Act;
- (b) any official appointed and anybody elected or constituted under repealed Ordinance shall continue and shall be deemed to have been appointed, elected or constituted, as the case may be, under the corresponding provision of this Act;
- (c) any document referring to any provision of the repealed Ordinance shall be construed as referring, as far as may be, to this Act, or to the corresponding provision of this Act;
- (d) mortgages recorded in any register or book maintained at any office under the repealed Ordinance shall be deemed to have been recorded in the register or book maintained under the corresponding provision of this Act;
- (e) any licence, certificate or document issued, made or granted under the repealed Ordinance shall be deemed to have been issued, made or granted under this Act and shall, unless cancelled, in pursuance of any provisions of this Act, continue to be in force until the date specified in the licence, certificate or document.