

- (c) carry out any specific examination or establish any procedure in any particular case; or
- (d) submit a report or an interim report as the case may be on any matter referred to in paragraphs (a) to (c),

and the Commission may specify the time within which such requirements shall be complied with by the auditor.

(4) The auditor shall comply with any requirement of the Commission under subsection (3) and the market intermediary shall remunerate the auditor at the rates specified by the Commission in respect of the discharge by him of all additional duties under this section.

(5) The market intermediary shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all of the additional duties under this section.

CHAPTER 3

PROTECTION OF CLIENTS' ASSETS

Interpretation

109. For the purposes of this Chapter, unless the context otherwise requires—

“client” in relation to a market intermediary means a person on behalf of whom the market intermediary trades or from whom the market intermediary accepts instructions to deal in securities;

“money or other assets” means money received or retained by, or any other asset deposited with a market intermediary in the course of its business for which it is liable to account to its client, and any money or other assets accruing therefrom.

110. (1) A market intermediary shall, to the extent that it receives money or other assets from or on account of a client— Protection of client's assets

- (a) do so on the basis that the money or other assets shall be applied solely for such purpose as may be agreed to by the client when or before it receives the money or other assets;
- (b) shall hold money and other assets received on account of a client in trust for the benefit of such client;
- (c) shall not commingle money received on account of a client with its own funds or use such money as margin or guarantee for, or to secure any transaction of or to extend credit of any person other than the client; and
- (d) record and maintain a separate book entry for each client in accordance with the provisions of this Part or any rules that may be specified under subsection (2) in relation to that client's money or other assets.

(2) The Commission may, make rules in respect of all or any of the matters in subsection (1), including the handling of money or other assets by a market intermediary.

(3) Except as otherwise provided in this section or the rules made under subsection (2), all money or other assets received from or on account of clients or deposited with a market intermediary—

- (a) shall not be available for payment of debts of the market intermediary; and
- (b) shall not be liable to be paid or taken in execution under an order or a process of any court in respect of any liability of that market intermediary.

(4) Any market intermediary who, contravenes subsection (1), subsection (3) or any rule made under subsection (2), shall commit an offence.

Rules on
business conduct

111. (1) The Commission may make rules regulating the business conduct of a market intermediary or a registered person as the Commission considers necessary in the interest of client protection and for the purpose of raising professional standards of a market intermediary and a registered person.

(2) Any person who contravenes the rules made under subsection (1) commits an offence.

Duty in making
recommendations

112. (1) A market intermediary or a registered person shall not make a recommendation with respect to any securities to a client where such client may reasonably be expected to rely on the recommendation, if the market intermediary or registered person does not have a reasonable basis for making the recommendation to the client.

(2) For the purposes of subsection (1), a market intermediary or registered person does not have a reasonable basis for making a recommendation to a client unless—

- (a) he has, for the purposes of ascertaining that the recommendation is appropriate, having regard to the information possessed by him concerning the investment objectives, financial situation and particular needs of the client, given such consideration to, and conducted such analysis or investigation of the subject matter of the recommendation as is reasonable in all the circumstances; and
- (b) he has based the recommendation on the consideration, analysis or investigation referred to in paragraph (a).

113. (1) Where a market intermediary or a registered person sends a circular or other similar written communication in which he makes a recommendation, with respect to any securities, he shall include in the circular or other written communication in print not less legible than that used in the remainder of the circular or other written communication, a concise statement of the nature of any interest in the securities, or any interest in the acquisition or disposal of the securities that he or a person associated with or connected to him, has at the date on which the circular or other communication is sent.

Disclose certain
interests in
securities

(2) Where a market intermediary or registered person is charged with an offence in respect of a contravention of subsection (1), it shall be a defence for the market intermediary or registered person to prove that at the time the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware —

- (a) that he had an interest in the securities, or an interest in the acquisition or disposal of the securities; or
- (b) that the person associated with or connected to him had an interest in the securities, or an interest in the acquisition or disposal of the securities as the case may be.

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

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

deemed to have an interest in the acquisition or disposal of the securities; and

- (c) notwithstanding subsection (1) or paragraph (b) of subsection (2), a person is not connected to or associated with another person unless the person and the other person are acting jointly or otherwise acting under or in accordance with an arrangement made between them, in relation to the sending of the circular or other communication.

(4) When a market intermediary sends to a person a circular or other written communication to which subsection (1) applies, the market intermediary shall preserve a copy of the circular or other written communication for six years from the date on which the circular or other written communication is sent.

(5) For the purposes of this section, a circular or other written communication sent to a person shall, if it is signed by an officer of a market intermediary, be deemed to have been sent by the market intermediary.

(6) Any person who contravenes this section commits an offence under this Act.

Internal
procedures and
processes

114. A market intermediary shall establish and maintain procedures and processes for the purpose of monitoring compliance by such market intermediary and its employees, with the provisions of the Act, regulations, rules or directives made thereunder which will enable the market intermediary to monitor risk to its business.

Register of
market
intermediaries
and registered
persons

115. (1) The Commission shall keep in such form and manner as it may determine, a register of market intermediaries and registered persons which shall be made available for public inspection in such manner as the Commission may determine.

(2) The register shall be in electronic form and the Commission shall update the register at all times.

(3) The register for the market intermediary and the registered person shall contain –

- (a) the name of the market intermediary or the registered person;
- (b) the business address of the market intermediary or the registered person;
- (c) the type of licence held by the market intermediary or the type of registration held by the registered person;
- (d) the date the licence was granted to the market intermediary or the date the registration was granted to the registered person;
- (e) the names of registered persons acting for or employed by the market intermediary; and
- (f) any other matter that the Commission considers appropriate.

(4) The Commission may make necessary amendments in the register with respect to a market intermediary or a registered person where the licence held by the market intermediary is cancelled or suspended or where the registration held by the registered person is cancelled or suspended under this Act.

PART IV

Trade In Unlisted Securities

116. The object and purpose of this Part shall be –

Object and
purpose of this
Part

- (a) to provide a platform through a recognised market operator for sale and purchase of unlisted securities in Sri Lanka to local and overseas investors in a transparent manner; and