

A BILL

i n t i t u l e d

An Act to amend the Capital Markets and Services Act 2007.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Capital Markets and Services (Amendment) Act 2015.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of—

- (a) different provisions of this Act; or
- (b) all or different provisions of this Act in respect of different classes or categories of persons or capital market products, including Islamic capital market products.

General amendment

2. The Capital Markets and Services Act 2007 [*Act 671*], which is referred to as the “principal Act” in this Act, is amended—

- (a) by substituting for the words “Securities Commission Act 1993” wherever appearing the words “Securities Commission Malaysia Act 1993”; and

- (b) in the national language text, by substituting for the words “pihak berkuasa menyelia” wherever appearing the words “pihak berkuasa penyeliaan”.

Amendment of section 2

3. Subsection 2(1) of the principal Act is amended—

- (a) in the definition of “licensed bank”, by substituting for the words “Banking and Financial Institutions Act 1989 [Act 372]” the words “Financial Services Act 2013 [Act 758]”;
- (b) in the definition of “Bank Negara”, by substituting for the words “Central Bank of Malaysia Act 1958 [Act 519]” the words “Central Bank of Malaysia Act 2009 [Act 701]”;
- (c) in the definition of “Shariah Advisory Council”, by substituting for the words “section 316A” the words “the Securities Commission Malaysia Act 1993 [Act 498]”;
- (d) by inserting after the definition of “public interest directors” the following definition:
- ‘ “recognized market” means a stock market or a derivatives market operated or maintained by an operator registered under section 34;’;
- (e) by substituting for the definition of “officer” the following definition:
- ‘ “officer” has the meaning assigned to it in the Securities Commission Malaysia Act 1993;’;
- (f) in the definition of “Chairman”, by substituting for the words “paragraph 4(1)(a)” the words “paragraph 4(2)(a)”;

(g) by inserting after the definition of “financial planning” the following definition:

‘ “foreign supervisory authority” means a foreign authority or any other person which exercises functions corresponding to the functions of the Commission under the securities law;’;

(h) by substituting for the definition of “Commission” the following definition:

‘ “Commission” means the Securities Commission Malaysia established under the Securities Commission Malaysia Act 1993;’;

(i) in the definition of “Deputy Chief Executive”, by substituting for the words “paragraph 4(1)(aa)” the words “paragraph 4(2)(b)”; and

(j) by deleting the definition of “Islamic capital market business or transaction”.

Amendment of section 5

4. Section 5 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “**securities and derivatives**” the words “**securities, derivatives and capital market products**”;

(b) by substituting for subsection (1) the following subsection:

“(1) Notwithstanding the definition of “securities”, “derivatives”, “Islamic securities” or “Islamic derivatives” under this Act and “interest” as defined in subsection 84(1) of the Companies Act 1965, the Minister may, on the

recommendation of the Commission, by order published in the *Gazette*, prescribe any instrument or product or class of instruments or products to be—

- (a) securities;
- (b) derivatives;
- (c) capital market products;
- (d) Islamic securities;
- (e) Islamic derivatives; or
- (f) Islamic capital market products,

for the purposes of the securities laws.”; and

(c) by substituting for subsection (3) the following subsection:

“(3) In a prescription made under subsection (1) or (2) in respect of securities, derivatives, capital market products, Islamic securities, Islamic derivatives, or Islamic capital market products, the Minister may—

- (a) for the purposes of regulating the issue, offer for subscription or purchase, or the making of an invitation to subscribe for or purchase, any securities or Islamic securities, specify in the prescription any provision of this Act to apply to such securities or Islamic securities;
- (b) in the case of derivatives or Islamic derivatives, specify in the prescription any provision of this Act to apply to such derivatives or Islamic derivatives; and
- (c) for the purposes of regulating the issue, offer for subscription or purchase, or the making of an invitation to subscribe for or purchase, any

capital market product or Islamic capital market product, specify in the prescription any provision of this Act to apply to such capital market product or Islamic capital market product.”.

Amendment of section 7

5. Section 7 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) A person shall not establish, operate or maintain, or assist in establishing, operating or maintaining, or hold himself out as providing, operating or maintaining, a stock market or derivatives market that is not—

(a) a stock market of a stock exchange;

(b) a derivatives market of a derivatives exchange;

(c) a stock market of an exchange holding company that is itself approved as a stock exchange;

(d) a derivatives market of an exchange holding company that is itself approved as a derivatives exchange;

(e) a recognized market;

(f) an exempt stock market; or

(g) an exempt derivatives market.”;

(b) by deleting subsection (2); and

(c) in subsection (5), by deleting the words “or (2)”.

Substitution of section 27

6. The principal Act is amended by substituting for section 27 the following section:

“Closure of stock exchange or derivatives exchange

27. (1) The Minister may, on the recommendation of the Commission, direct an exchange to close a stock market or a derivatives market of the exchange.

(2) In exercising his power under subsection (1), the Minister may, on the recommendation of the Commission—

(a) direct the exchange to close the stock market or the derivatives market for a period not exceeding five business days; and

(b) extend the closure of the stock market or derivatives market under paragraph (a) for any further periods each not exceeding five business days.

(3) The Minister shall specify the grounds for the closure in the direction given and the grounds for any extension of closure under subsection (2).

(4) The Commission may make the recommendation in subsection (1) if the Commission is of the opinion that an orderly and fair market for trading in securities on a stock market or trading in derivatives on a derivatives market, of an exchange is being or is likely to be prevented because—

(a) an emergency or natural disaster has occurred within Malaysia; or

(b) there exists an economic or financial crisis or any other circumstances within or outside Malaysia.

(5) The Commission shall, as soon as may be practicable, give a copy of the direction or extension under subsection (2) to an approved clearing house and direct the approved clearing house to do all that it is reasonably capable of doing to give effect to such direction or extension while the direction or extension remains in force.

(6) In this section—

“business day” means any day on which there is official trading on the exchange but for the closure;

“fair market” includes but is not limited to a market that reflects the forces of supply and demand.”.

Amendment of section 30

7. Section 30 of the principal Act is amended by substituting for paragraph (7)(b) the following paragraph:

“(b) cause the suspension order or the notice of the extension, as the case may be, to be published in at least one national language daily newspaper and one English language daily newspaper.”.

Deletion of Subdivision 3 of Division 2 of Part II

8. The principal Act is amended by deleting Subdivision 3 of Division 2 of Part II.

Substitution of Subdivision 4 of Division 2 of Part II

9. The principal Act is amended by substituting for Subdivision 4 of Division 2 of Part II the following subdivision:

“Subdivision 4 –Recognized market

Recognized market operator

34. (1) For the purposes of paragraph 7(1)(e), the Commission may upon application by a person, register the person as a recognized market operator subject to any terms and conditions as the Commission considers necessary.

(2) The Commission may, from time to time, add, vary, amend or revoke any terms and conditions imposed under subsection (1).

Application for registration

35. (1) An application under subsection 34(1) shall be accompanied by such documents and information and in such manner as the Commission may specify.

(2) Where an applicant under subsection 34(1) is an operator of a stock market or a derivatives market outside Malaysia, the Commission may, in registering the applicant as a recognized market operator, have regard to, whether—

- (a) the applicant is already authorized to operate a stock market or derivatives market in the foreign jurisdiction;
- (b) the applicant is from a recognized and comparable jurisdiction; and
- (c) the Commission has a regulatory arrangement with the foreign supervisory authority.

(3) Notwithstanding subsections (1) and (2), the Commission may, with the consent of the applicant, treat an application under subsection 34(1) as an application under section 8 if the Commission is of the opinion that the applicant would be more appropriately regulated as an approved stock exchange or derivatives exchange.

Duties of recognized market operator

36. A recognized market operator shall—

- (a) comply with any direction issued by the Commission, whether of a general or specific nature, and the recognized market operator shall give effect to such directions; and
- (b) provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires.

Withdrawal of registration

36A. (1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investors, in the public interest or for the maintenance of an orderly and fair market, the Commission may, by notice in writing, withdraw the registration with effect from a date that is specified in the notice.

(2) Such notice referred to in subsection (1) shall state the grounds in support of the withdrawal.

(3) Notwithstanding the withdrawal under subsection (1), the Commission may permit the person to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of—

- (a) closing down the operations of the recognized market to which the withdrawal relates; or
- (b) protecting the interest of the investors or the public interest.

(4) Where the Commission has granted permission to a person under subsection (3), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 34.

(5) The Commission shall not exercise its power under subsection (1) in relation to a recognized market operator that has been registered under subsection 34(1) unless it has given the recognized market operator an opportunity to be heard.

(6) Any withdrawal of registration made under this section shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement entered into by the recognized market operator whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1); or

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

Change in status

36B. (1) The Commission may, on application by a recognized market operator or on its own initiative, from time to time, review the status of a recognized market operator under this Subdivision.

(2) The Commission may, following the review conducted under subsection (1), require the recognized market operator to make an application for the recognized market to be an approved stock exchange or derivatives exchange under section 8.

(3) The Commission shall not exercise its powers under subsection (2) without giving the person an opportunity to be heard.”.

New Subdivision 5A of Division 2 of Part II

10. The principal Act is amended by inserting after Subdivision 5 of Division 2 of Part II the following subdivision:

“Subdivision 5A—General

Interpretation

40A. In this Subdivision, unless the context otherwise requires—

“relevant person” means a stock exchange, a derivatives exchange, a recognized market, an approved clearing house or a central depository, as the case may be;

“senior officer” means a person, other than the chief executive officer or a director, having authority and responsibility for planning, directing or controlling the activities of a relevant person, including the chief operating officer, members of decision making committees and other persons performing key functions such as risk management, compliance, internal audit or other functions as may be specified by the Commission;

“statutory manager” means a person appointed by the Commission under this Subdivision for the purposes of managing the whole or such part of the business and affairs of a relevant person.

Publication of notice of suspension of trading or closure

40B. Where an action is taken by the Minister or the Commission under section 12, 18, 27, 28, 354 or 355, as the case may be, the Commission shall publish a notice of the action taken in such manner as the Commission considers appropriate.

Rights of stock exchange, derivatives exchange or approved clearing house not to be affected by laws relating to contracts

40c. Nothing in any law relating to contracts, to the extent of its inconsistency with the provisions of this Act or the rules of a stock exchange, derivatives exchange or approved clearing house, shall render unenforceable or otherwise adversely affect—

- (a) any rights to be conferred on a stock exchange, a derivatives exchange or an approved clearing house in relation to securities or derivatives, as the case may be, under this Act or its rules;
- (b) any rights to be conferred on a party to a securities or derivative entered into on a stock market of a stock exchange, a derivatives market of a derivatives exchange, an exempt stock market, an exempt derivatives market or such other market as approved under this Act or the rules of a stock exchange, a derivatives exchange or an approved clearing house, as the case may be; or
- (c) anything done or omitted to be done under or in relation to a securities or derivative entered into on a stock market of a stock exchange, a derivatives market of a derivatives exchange, an exempt stock

market, an exempt derivatives market or such other market as approved under this Act, as the case may be.

Power of Commission to appoint statutory manager

40D. (1) Without prejudice to any provision in this Part, for the purposes of mitigating and managing systemic risk in the capital market or where the Commission considers it is—

- (a) in the public interest;
- (b) for the protection of investors;
- (c) for the proper regulation of a relevant person; or
- (d) necessary in the exercise of its powers under section 30,

the Commission may appoint a statutory manager.

(2) The Commission may—

- (a) in the case of a recognized market; or
- (b) with the prior approval of Minister, in the case of a stock exchange, a derivatives exchange, an approved clearing house and a central depository,

appoint a statutory manager to—

- (A) exercise, perform and discharge with respect to the relevant person, all the powers, duties and functions conferred or imposed on, or assigned to, the relevant person, by or under any written law or the articles of association of the relevant person; and
- (B) take possession of, and use any such movable or immovable property as was used by the relevant person, for the purpose of carrying on the business or operations of the relevant person.

(3) Where the Commission has appointed a statutory manager under subsection (2), the Commission may make all or any of the following orders in writing to—

- (a) grant access to the property of the relevant person to a statutory manager;
- (b) transfer control of the whole or part of the business or affairs of the relevant person and management of the whole or such part of the business and affairs of the relevant person, to a statutory manager; or
- (c) issue any direction to any person including a statutory manager in relation to the management of the whole or part of the business or affairs of the relevant person.

(4) Every such exercise, performance and discharge of such powers, duties and functions by the statutory manager under subsection (2) shall be as valid and effectual as if it were an exercise, performance and discharge by the relevant person.

(5) The Commission may, during the period an order under this section is in force, suspend the functions, rights and privileges of any directors, chief executive officer or senior officer of the relevant person, and for such period, as the Commission may determine.

(6) Where an order is made under this section, the Commission shall, as soon as may be practicable, give a copy of the order, to the principal officer of the relevant person to which the order relates and to such members of the governing body thereof, if any, as the Commission may consider appropriate in the circumstances.

(7) Where an order has been made under this section, the Commission shall cause the order to be published in at least one national language daily newspaper and one English language daily newspaper.

(8) An order made under this section takes effect on the date specified in the order.

Assistance and access to information, etc.

40E. (1) A relevant person or any of its directors, its chief executive officer, secretary, employee or agent and any auditor appointed by the relevant person, shall—

- (a) provide all necessary assistance; and
- (b) grant full and free access to all information, document, system, trading facility, or any other property relating to the business or operations of a relevant person,

to a statutory manager, to enable the statutory manager to discharge his powers, duties and functions stated in the order made under section 40D.

(2) Any of the persons referred to in subsection (1) who refuses or fails, without lawful excuse, to allow the statutory manager access in accordance with this section commits an offence.

(3) Any of the persons referred to in subsection (1) who, with intent to defeat the purposes of this section or with intent to prevent, delay or obstruct the statutory manager from carrying out any of his powers, duties and functions under this section—

- (a) destroys, conceals or alters any information, document, system, trading facility, or any other property relating to the business or operations of a relevant person; or
- (b) sends or attempts to send or conspires with any other person to send out of Malaysia any such document or any property of any description belonging to or in the disposition of or under the control of a relevant person,

commits an offence.

(4) Any person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding five

million ringgit or to imprisonment for a term not exceeding ten years or to both.

Remuneration, expenses and indemnity of statutory manager

40F. Where a statutory manager is appointed under subsection 40D(2)—

- (a) his remuneration and any expenses properly incurred by him; and
- (b) any indemnity to which he is entitled,

shall be charged on, and paid out of any property or asset of the relevant person, which is in the custody or control of the statutory manager.

Annual fees payable

40G. (1) A relevant person shall pay to the Commission an annual fee or any other fees, as the Commission may prescribe.

(2) Any fees paid to the Commission under this Part shall be paid to the Fund established under section 23 of the Securities Commission Malaysia Act 1993.

Non-application of Companies Act 1965

40H. The provisions of the Companies Act 1965 in relation to the offering of shares or debentures to the public by a private company shall not apply where the offer or invitation to subscribe for or purchase is made by the private company on an approved, registered, recognized stock market or derivatives market, or an exempt stock market or exempt derivatives market, under the securities laws.”.

New Subdivision 7 of Division 2 of Part II

11. The principal Act is amended by inserting after Subdivision 6 of Division 2 of Part II the following subdivision:

“Subdivision 7 – Enforceability of netting provisions under qualified capital market agreement

Interpretation

57A. In this Subdivision, unless the context otherwise requires—

“netting provision” means a contractual provision which provides that when the events specified by the parties under a qualified capital market agreement occur, two or more debts, claims or obligations can be set-off against each other or be converted into a net debt, claim or obligation and includes close-out netting arrangement;

“qualified capital market agreement” means—

- (a) an agreement with a netting provision, in respect of one or more securities borrowing and lending transactions; or
- (b) an agreement specified by the Commission to be a qualified capital market agreement for the purposes of this Part;

“securities borrowing and lending” means an arrangement where any securities borrowing and lending transaction is entered into, other than—

- (a) transactions entered into between the approved clearing house and participants that is done in accordance with the rules of the approved clearing house; and
- (b) transactions in respect of unlisted debt securities effected under the Real Time Electronic Transfer of Funds and Securities (RENTAS) system.

Enforceability of rights under netting provision

57B. (1) The rights of the parties under a netting provision shall not be stayed, avoided or otherwise limited by the commencement of any other proceeding which has the effect of assuming control or managing the business, affairs and properties to which a party may be subject.

(2) The netting provision of a qualified capital market agreement under subsection (1) shall be enforceable in accordance with its terms.

Application of this Part

57c. No provision in securities laws or in any other written law, including any written law relating to the management of systemic risk or promoting financial stability, whether enacted before or after the commencement of this Act, shall limit, restrict or otherwise affect the operations of Subdivisions 6 and 7 of this Part.”.

New section 59A

12. The principal Act is amended by inserting after section 59 the following section:

“Civil liability of principal for acts of representative

59A. (1) A person who is authorized or engaged by a principal to act as its representative shall be deemed to be an agent of the principal when—

- (a) the agent engages in any conduct, makes any representation or acts within his authority; and
- (b) such conduct, representation or act is carried out in the course of the business for which the principal is licensed.

(2) For the purposes of subsection (1), a principal shall not be entitled to rely on any arrangement, agreement or contract entered into—

(a) between the principal and its representative; or

(b) between the principal and its client,

that operates to completely remove or exclude its obligation or liability as the principal of its representative.

(3) A principal shall not be liable for the act of its representative if the representative has ceased to be a representative of the principal and the principal has taken all reasonable steps to inform, or bring to the knowledge of clients of the fact of such cessation.

(4) For the purposes of this section, “principal” means a holder of a Capital Market Services Licence.”.

Deletion of section 89

13. The principal Act is amended by deleting section 89.

Amendment of section 92A

14. Section 92A of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) It shall be a defence to a prosecution or any proceeding for a contravention of this section by any person if he proves that—

(a) he had made all enquiries as were reasonable in the circumstances; and

(b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that—

(i) the statement or information was true and not misleading; or

(ii) there was no material omission.”.

Deletion of section 94

15. The principal Act is amended by deleting section 94.

Deletion of section 95

16. The principal Act is amended by deleting section 95.

New section 139zs

17. The principal Act is amended by inserting after section 139ZR the following section:

“Nomination

139zs. Notwithstanding anything inconsistent with or contrary to any other written law relating to probate, administration, distribution, or disposition, of the estates of deceased persons, or in any practice or custom in relation to this matter, a member may nominate any person to receive any payment or disposal of any part of accrued benefits of the member, after the death of the member, subject to any regulations or guidelines made under this Act.”.

Amendment of section 160

18. Subsection 160(2) of the principal Act is amended by inserting after the word “refundable” the words “, except as may be specified by the Commission”.

Amendment of section 201

19. Section 201 of the principal Act is amended by substituting for subsections (5) and (6) the following subsections:

“(5) Where—

(a) an insider—

(i) acquired or agreed to acquire securities; or

- (ii) procured another person to acquire or agree to acquire securities,

in contravention of subsection 188(2); or

- (b) an insider communicated information referred to in subsection 188(1) to another person, in contravention of subsection 188(3),

and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider had been charged with an offence in respect of the contravention or whether or not the contravention had been proved in a prosecution, the Commission may, if the Commission considers that it is in the public interest to do so, by civil action, take any or both of the following actions, against the insider:

- (A) recover an amount equal to three times the amount being the difference between the price at which the securities were acquired or agreed to be acquired, by the insider or the other person, and the price at which they would have been likely to have been acquired at the time of the acquisition or agreement, as the case may be, if the information had been generally available;
- (B) claim civil penalty in such amount as the court considers appropriate having regard to the seriousness of the contravention, being an amount not more than one million ringgit.

- (6) Where—

- (a) an insider—

- (i) disposed of or agreed to dispose of securities;
or

- (ii) procured another person to dispose of or agree to dispose of securities,

in contravention of subsection 188(2); or

- (b) an insider communicated information referred to in subsection 188(1) to another person, in contravention of subsection 188(3),

and such securities were permitted to be traded on a stock market of a stock exchange, then, whether or not the insider had been charged with an offence in respect of the contravention or whether or not the contravention had been proved in a prosecution, the Commission may, if the Commission considers that it is in the public interest to do so, by civil action, take any or both of the following actions, against the insider:

- (A) recover an amount equal to three times the amount being the difference between the price at which the securities were disposed of, or agreed to be disposed of, by the insider or the other person, and the price at which they would have been likely to have been disposed of at the time of the disposal or agreement, as the case may be, if the information had been generally available;
- (B) claim civil penalty in such amount as the court considers appropriate having regard to the seriousness of the contravention, being an amount not more than one million ringgit.”.

Amendment of section 216

20. Section 216 of the principal Act is amended—

(a) in subsection (1)—

- (i) by inserting after the definition of “offeror” the following definition:

“prescribed institution” has the meaning assigned to it in the Development Financial Institutions Act 2002 [Act 618];’;

- (ii) by deleting the definition of “officer”;

- (iii) in the definition of “shareholder”, by substituting for the words “that is prescribed in the Code” the words “specified by the Commission”;
- (iv) by deleting the definition of “dissenting shareholder”;
- (v) by inserting after the definition of “acquirer” the following definition:
 - ‘ “close relative” means a mother, father, child, brother, sister, an adopted child or a step child;’;
- (vi) by substituting for the definition of “company” the following definition:
 - ‘ “company”, in relation to a company being taken over, means—
 - (a) a corporation listed on a stock exchange;
 - (b) a public company as may be specified by the Commission; or
 - (c) any other entity as may be specified by the Commission;’;
- (vii) by deleting the definitions of “private company” and “public company”;
- (viii) by substituting for the definition of “share” the following definition:
 - ‘ “share”, except for the purposes of sections 222, 223 and 224, means a share which is not a preference share, in a company, or a unit in an entity specified by the Commission;’;
- (ix) by substituting for the definition of “voting shares” the following definition:
 - ‘ “voting shares” means a share which entitles the holder thereof to the right to vote at a general meeting.’;

(x) in the definition of “take-over offer”—

(A) in paragraph (b), by substituting for the words “as defined in the Code;” the words “; or”;

(B) in paragraph (c), by substituting for the words “; or” a full stop; and

(C) by deleting paragraph (d);

(b) in subsection (3)—

(i) in paragraph (b), by substituting for the words “parent, child, brother or sister” the words “close relative”;

(ii) in paragraph (f)—

(A) by substituting for the words “parent, child, brother or sister” the words “close relative”; and

(B) by deleting the word “and” appearing at the end of the paragraph;

(iii) by substituting for paragraph (g) the following paragraph:

“(g) partners of a partnership;”;

(iv) by inserting after paragraph (g) the following paragraphs:

“(h) an individual and any person who is accustomed to act in accordance with the instructions of the individual, and the close relative of, companies controlled by, or related trusts of, the individual; and

(i) a person, other than a licensed bank or a prescribed institution, who, directly or indirectly, provides finance or financial assistance, in connection with an acquisition

of voting shares or voting rights, with a person who receives such finance or financial assistance.”;

(c) by inserting after subsection (3) the following subsection:

“(3A) In relation to a take-over offer of an entity other than a corporation or a public company, the Commission may specify persons who may be presumed to be persons acting in concert.”; and

(d) by inserting after subsection (5) the following subsection:

“(6) For the purposes of sections 222, 223 and 224—

“convertible securities” means securities such as warrants, options and other securities that are issued by the offeree which are capable of being converted into new voting shares of the offeree;

“dissenting shareholder” includes any shareholder and convertible securities holder, who has not accepted a take-over offer and any shareholder who has failed or refused to transfer shares to an acquirer in accordance with a take-over offer;

“share” means a voting share, in a company, or a unit in an entity specified by the Commission, and includes convertible securities as if those securities were shares of a separate class of a company and any reference to a holder of shares, and to shares being allotted, is to be read accordingly.”.

Amendment of section 217

21. Section 217 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “**and Mergers**” the words “**, Mergers and Compulsory Acquisition**”;

(b) by substituting for subsection (3) the following subsection:

“(3) The Code shall contain principles governing take-over offer, merger or compulsory acquisition.”;

(c) by substituting for subsection (4) the following subsection:

“(4) The Commission shall administer the Code and may do all such things as may be necessary or expedient to give full effect to the provisions of this Division and the Code and without limiting the generality of the foregoing, may—

(a) issue rulings—

(i) to interpret this Division and the Code;

(ii) on the practice and conduct of persons involved in or affected by any take-over offer, merger or compulsory acquisition, or in the course of any take-over, merger or compulsory acquisition; and

(b) enquire into any matter relating to any take-over offer, merger or compulsory acquisition whether potential or otherwise, and for this purpose, may issue public statements as the Commission thinks fit with respect thereto.”; and

(d) by deleting subsection (5).

Amendment of section 218

22. Section 218 of the principal Act is amended—

(a) by substituting for the shoulder note the following shoulder note:

“Compliance with Code, guidelines, directions, practice notes and rulings”;

(b) in subsection (1), by substituting for the words “and any ruling made under subsection 217(4)” the words “, guidelines, directions, practice notes and any ruling issued by the Commission”;

(c) by substituting for subsection (2) the following subsection:

“(2) Subject to section 219, an acquirer who has obtained control in a company shall make a take-over offer for the remaining voting shares in accordance with the provisions of the Code, guidelines, directions, practice notes and any ruling issued by the Commission.”; and

(d) by substituting for subsection (3) the following subsection:

“(3) Subject to section 219, an acquirer who has obtained control shall not acquire any additional voting shares in that company except in accordance with the provisions of the Code, guidelines, directions, practice notes and any ruling issued by the Commission.”.

New sections 218A, 218B, 218C and 218D

23. The principal Act is amended by inserting after section 218 the following sections:

“Power of Commission to appoint independent adviser

218A. (1) Where an offeree has failed to appoint an independent adviser as required under the Code, the Commission may, if the Commission is satisfied that it is in the interest of the shareholders of the offeree to do so, appoint an independent adviser or such other person or body of persons as the Commission may decide, to provide comments, opinions, information and recommendation on the take-over offer in an independent advice circular.

(2) Where the Commission is of the opinion that the whole or any part of the costs and expenses of an independent adviser, person or body of persons appointed by the Commission under

this section should be borne by the offeree concerned, the Commission may, by order in writing, direct the offeree to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified.

(3) Where an offeree has failed to comply with an order of the Commission under subsection (2), the amount specified in the order may be sued for and recovered by the Commission in a court as a debt due to the Commission.

Powers of independent adviser appointed by Commission

218B. An independent adviser or such other person appointed by the Commission under section 218A, shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of his functions.

Prohibition against communication of certain matters by independent advisers and employees

218C. Except for the purpose of carrying into effect the provisions of this Act, or so far as may be required for the purpose of any proceedings, civil or criminal, an independent adviser or such other person appointed by the Commission under section 218A and an employee of such independent adviser or other person shall not communicate any matter, which may come to his knowledge in the performance of his duties to any person other than the Commission, or any other person specified by the Commission and, in the case of an employee, to any person other than the independent adviser by whom he is employed.

Access to books, accounts and records, etc.

218D. (1) Upon request by an independent adviser or such other person appointed by the Commission under section 218A, an offeree and any of its directors, its executive officer or secretary, employee or agent shall give access to any information, books, accounts and records of, and any assets held by the offeree relating to his business.

(2) An offeree and any of its directors, its executive officer, secretary, employee or agent appointed by the offeree, shall answer all questions relevant to the preparation of an independent advice circular which are put to him by an independent adviser.”.

Amendment of section 219

24. Subsection 219(1) of the principal Act is amended—

- (a) by substituting for the words “Subject to subsection 217(5), the Commission” the words “The Commission”; and
- (b) by substituting for the words “and any ruling made under subsection 217(4)” the words “, guidelines, directions, practice notes and any ruling issued by the Commission”.

Amendment of section 220

25. Section 220 of the principal Act is amended—

- (a) by substituting for the shoulder note the following shoulder note:

“Action by Commission in cases of non-compliance with Code, guidelines, directions, practice notes and rulings”;

- (b) in subsection (1)—

- (i) by substituting for the words “or the Code, or any ruling made under subsection 217(4)” the words “, the Code, guidelines, directions, practice notes or any ruling issued by the Commission”;
- (ii) in paragraph (a), by inserting after the word “Code” the words “, guidelines, directions, practice notes”;
- (iii) by substituting for paragraph (d) the following paragraph:

“(d) require a stock exchange or derivatives exchange to deprive the person in breach from having access, directly or indirectly, to the facilities of the stock exchange or derivatives exchange;”;

(iv) by inserting after paragraph (d) the following paragraph:

“(da) prohibit the person in breach from having access, directly or indirectly, to the capital market;”;

(v) by substituting for paragraph (e) the following paragraph:

“(e) where the person in breach is a listed corporation, require the stock exchange—

(i) to suspend trading in the securities of the corporation;

(ii) to suspend the listing of the corporation;
or

(iii) to remove the corporation or the class of securities of the corporation from the official list;”;

(vi) in paragraph (f), by substituting for the word “direct” the word “require”;

(vii) by deleting paragraph (g);

(viii) in paragraph (h), by substituting for the full stop at the end of the paragraph a semi colon;

(ix) by inserting after paragraph (h) the following paragraph:

“(i) where the person in breach is an adviser, refuse to accept or consider any submission relating to any matter under this Division from such person.”;

(c) in subsection (3), by inserting after the word “Code” the words “, guidelines, directions, practice notes”;

(d) by inserting after subsection (8) the following subsection:

“(8A) Where a person has failed to comply with any direction issued under subsection (1), the Commission may deprive such person from any capital market services by requiring a licensed person, registered person or capital market service provider not to act or continue to act for such person, for any period as may be determined by the Commission.”; and

(e) in subsection (9)—

(i) in the definition of “breach”, by substituting for the words “Part or the Code or any ruling made under subsection 217(4)” the words “Division, the Code, guidelines, directions, practice notes or any ruling issued by the Commission”; and

(ii) in the definition of “person in breach”, by substituting for the words “Part or the Code or any ruling made under subsection 217(4)” the words “Division, the Code, guidelines, directions, practice notes or any ruling issued by the Commission”.

Amendment of section 221

26. Section 221 of the principal Act is amended—

(a) in subsection (1), by deleting the words “under this Division or the Code”; and

(b) by substituting for subsection (3) the following subsection:

“(3) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit.”.

Amendment of section 222

27. Section 222 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) Where an offeror—

(a) has made a take-over offer for all the shares or all the shares in any particular class in an offeree; and

(b) has received acceptances of not less than nine-tenths in the nominal value of the offer shares,

the offeror may, within four months of the date of the take-over offer, acquire the remaining shares or remaining shares in any particular class in the offeree, by issuing a notice in the form or manner specified by the Commission to such effect, to all dissenting shareholders provided that the notice—

(A) is issued within two months from the date of achieving the conditions under paragraphs (a) and (b); and

(B) is accompanied by a copy of a statutory declaration by the offeror that the conditions for the giving of the notice are satisfied.”;

(b) by inserting after subsection (1) the following subsection:

“(1A) For the purpose of paragraph (1)(b), the acceptances shall not include shares already held at the date of the take-over offer by the offeror or persons acting in concert.”;

(c) by substituting for subsection (2) the following subsection:

“(2) Where an offeror has given notice to any dissenting shareholder under subsection (1), the dissenting shareholder may, by demand in writing, within one

month from the date of such notice, require the offeror to provide in writing the names and addresses of all other dissenting shareholders as shown in the register of members, and the offeror may only acquire the shares of the dissenting shareholders after fourteen days from the posting of those names and addresses to the dissenting shareholder.”; and

- (d) by substituting for subsection (3) the following subsection:

“(3) Upon the giving of the notice and statutory declaration under subsection (1), the offeror shall in accordance with subsection (7) acquire those shares on the terms of the take-over offer or, if the take-over offer contained two or more alternative sets of terms, on the terms which were specified in the take-over offer as being applicable to the dissenting shareholders.”.

Amendment of section 223

28. Subsection 223(2) of the principal Act is amended by substituting for the words “prescribed under the Code” the words “specified by the Commission”.

Amendment of section 248

29. Section 248 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the words “**misleading statement in**” the words “**disclosure document or**”;
- (b) by substituting for subsection (1) the following subsection:

“(1) A person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any statement or information contained in any disclosure document or prospectus that is false

or misleading, or from which there is a material omission, may recover the amount of loss or damage from all or any of the persons set out in the following paragraphs:

- (a) the issuer and each director of the issuer at the time of the issue of the disclosure document or prospectus;
- (b) a person who consented or caused himself to be named and was named in the disclosure document or prospectus given to an investor as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) a promoter, for any loss or damage arising from the disclosure document or prospectus or any relevant portion of the disclosure document or prospectus in respect of which he was a party to the preparation thereof;
- (d) a person other than the issuer, who was responsible for preparing the disclosure document or prospectus, or responsible for conducting the due diligence of the information or statement contained in the disclosure document or prospectus, by whatever name called and may include the principal adviser or lead arranger;
- (e) a person named in the disclosure document or prospectus with his consent, as having made a statement, that was included in the disclosure document or prospectus or on which a statement made in the disclosure document or prospectus was based, for any loss or damage caused by the inclusion of the statement in the disclosure document or prospectus;
- (f) a person named in the disclosure document or prospectus with his consent as a stockbroker, sharebroker, underwriter, auditor, banker or

advocate of the issuer in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities and who had made a statement that was included in the disclosure document or prospectus or on which a statement made in the disclosure document or prospectus was based, for any loss or damage caused by the inclusion of the statement in the disclosure document or prospectus; or

(g) a person who authorized or caused the issue of any disclosure document or prospectus in contravention of section 246, for any loss or damage caused by such contravention.”; and

(c) by inserting after subsection (3) the following subsection:

“(4) For the purposes of paragraph (1)(d), where a person who was responsible for preparing the disclosure document or prospectus, or for conducting the due diligence of the information or statement contained in the disclosure document or prospectus is an individual acting on behalf of his principal, the loss or damage may only be recoverable from the principal.”.

Substitution of section 256

30. The principal Act is amended by substituting for section 256 the following section:

“Agreements, documents and prospectus to exclude or restrict liability void

256. Any provision, clause or term contained in any agreement, contract, document or prospectus that is given or provided to an investor in relation to or concerning—

(a) an offer for subscription or purchase of securities;

- (b) an invitation to subscribe for or purchase securities;
or
- (c) the making available of securities,

that purports to exclude or restrict the liability of a person for contravention of section 92A, 246, 248 or 249 or for loss or damage under section 357 shall be void.”.

Substitution of section 256zo

31. Section 256zo of the principal Act is amended—

- (a) by substituting for paragraph (1)(a) the following paragraph:

“(a) shall lodge with the Commission the annual report of the business trust within four months after the end of each financial year of the business trust; and”;

- (b) by substituting for subsection (3) the following subsection:

“(3) A trustee-manager shall—

- (a) send to every unit holder without charge a copy of the document referred to in paragraph (1)(a) within four months after the end of each financial year of the business trust; and

- (b) if a unit holder requests for any additional copies of the document referred to in paragraph (1)(a), send to the unit holder the document requested for within two months after the request is received and upon payment of a reasonable sum as may be determined by the trustee-manager.”.

Amendment of section 256ZP

32. Section 256ZP of the principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the making of the statement or provision of the information or engaging in the conduct, was of the belief that—

- (a) the statement or information was true and not misleading;
- (b) the omission was not material;
- (c) there was no material omission; or
- (d) the conduct in question was not misleading or deceptive.”.

Amendment of section 273

33. Section 273 of the principal Act is amended—

- (a) in paragraph (1)(a), by substituting for the words “or an information memorandum” the words “, an information memorandum or a disclosure document”; and
- (b) in subsection (2), by substituting for the words “approved under section 214 or authorized or recognized by the Commission under section 256c” the words “approved under section 214, authorized or recognized by the Commission under section 256c or lodged with the Commission”.

New section 280A

34. The principal Act is amended by inserting after section 280 the following section:

“Duty to inform Commission, etc.

280A. (1) This section applies—

(a) where an information memorandum or a disclosure document has been lodged with the Commission or issued in relation to—

(i) an offer for subscription or purchase of debentures;

(ii) an invitation to subscribe for or purchase debentures; or

(iii) making available debentures; and

(b) where any person knows or becomes aware that—

(i) there has been significant change affecting a matter disclosed in the information memorandum or a disclosure document;

(ii) the information memorandum or a disclosure document may contain a material statement or information that is false or misleading; or

(iii) the information memorandum or a disclosure document may contain a statement or information from which there is a material omission.

(2) Where the person knows or becomes aware of the matter referred to in subsection (1), he shall immediately notify the person who is responsible for the distribution of the debentures, of that matter.

(3) The person who is responsible for the distribution of the debentures, shall upon being notified under subsection (2) inform—

(a) the Commission; and

(b) any person who has been provided with the information memorandum or disclosure document,

of the matter referred to in subsection (1).

(4) The Commission may, upon being informed under subsection (3), direct any person to rectify the matter, information or statement in the information memorandum or disclosure document, or take any other remedial measure, as the Commission considers necessary.

(5) Any person who contravenes this section commits an offence.

(6) For the purposes of this section, a disclosure document does not include prospectus.”.

Amendment of section 298

35. Section 298 of the principal Act is amended—

(a) by substituting for paragraph (1)(a) the following paragraph:

“(a) shall lodge with the Commission the annual report of a unit trust scheme or a prescribed investment scheme within two months after the end of each financial year of the unit trust scheme or prescribed investment scheme; and”;

(b) in subsection (3)—

(i) in paragraph (a), by substituting for the words “subparagraph (1)(a)(i)” the words “paragraph (1)(a)”;

(ii) in paragraph (b), by substituting for the words “the document referred to in subparagraph (1)(a)(ii) and any additional copies of the document referred to in subparagraph (1)(a)(i)” the words “any additional copies of the document referred to in paragraph (1)(a)”.

Substitution of Division 6 of Part VI

36. The principal Act is amended by substituting for Division 6 of Part VI the following Division:

“Division 6

Islamic capital market products, Islamic securities, *etc.*

Subdivision 1 – General

Interpretation

316. (1) In this Division, unless the context otherwise requires—

“Islamic capital market product” means—

- (a) Islamic securities;
- (b) a unit trust scheme structured in compliance with Shariah principles;
- (c) Islamic derivatives;
- (d) a private retirement scheme structured in compliance with Shariah principles;
- (e) any product or arrangement which is based on securities or derivatives, or any combination thereof structured in compliance with Shariah principles; or
- (f) any other product which the Minister may prescribe under section 5 as an Islamic capital market product;

“Islamic derivatives” means derivatives structured in compliance with Shariah principles;

“Islamic securities” means—

- (a) shares in a body corporate or an unincorporated body, which are classified as Shariah-compliant by the Shariah Advisory Council;

- (b) units in a unit trust scheme or prescribed investments structured in compliance with Shariah principles;
- (c) an Islamic structured product; or
- (d) sukuk structured in compliance with Shariah principles,

and includes any right, option or interest in respect thereof which is in compliance with Shariah principles;

“Islamic structured product” means a structured product structured in compliance with Shariah principles;

“structured product” has the same meaning as provided in the Commission’s guidelines in respect of structured products;

“sukuk” has the same meaning as provided in the Commission’s guidelines in respect of Islamic securities.

(2) Subject to subsection (1), Islamic securities do not include any Islamic Negotiable Instruments that fulfill the following conditions:

- (a) the issuance of the Islamic Negotiable Instrument is by an eligible licensed institution or Islamic bank that is in compliance with any standard issued by Bank Negara under the Islamic Financial Services Act 2013 [*Act 759*] which is applicable to Islamic Negotiable Instruments; and
- (b) the maximum tenure of the Islamic Negotiable Instrument does not exceed five years.

Subdivision 2 – Islamic capital market products

Islamic capital market products

316A. (1) An Islamic capital market product is a capital market product for the purposes of securities laws.

(2) The Commission may specify in the guidelines made under section 377 on the following:

- (a) any model agreement or documentation relating to a transaction or arrangement in respect of Islamic capital market products;
- (b) the duties and responsibilities of the different parties involved in a transaction or arrangement in respect of Islamic capital market products; and
- (c) any other matter as may be deemed appropriate,

in giving full effect to the principles of Shariah in relation to a transaction in respect of Islamic capital market products.

Subdivision 3 – Islamic Securities

Islamic securities

316B. (1) Islamic securities are securities for the purposes of securities laws.

(2) Any proposal, scheme, transaction, arrangement, activity, product or matter relating to Islamic securities shall comply with the relevant requirements under securities laws and guidelines issued by the Commission.

Prescription by Minister in respect of Islamic securities, Islamic derivatives or Islamic capital market product, etc.

316c. Where the Minister has made a prescription under section 5 in respect of Islamic securities, Islamic derivatives or Islamic capital market products, the Minister may make such modifications in the prescription on the usage of expressions in the securities laws as may be necessary to give full effect to the principles of Shariah in respect of such Islamic securities, Islamic derivatives or Islamic capital market products.

Application of Division 4 of Part VI of this Act

316d. Any reference to the “borrower” in Division 4 of Part VI of this Act shall be construed as a reference to an “issuer of sukuk” or “issuer of an Islamic structured product” for the purposes of the application of those provisions to sukuk or Islamic structured product.”.

Amendment of section 319

37. Section 319 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) A listed corporation shall cause to be submitted to the Commission—

(a) a copy of its audited annual accounts; and

(b) its interim and periodic financial reports,

at the same time such documents are submitted, announced or made available to the exchange.”.

Amendment of section 325

38. Section 325 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) Any proposed rules or any proposed amendments to the existing rules of a recognized self-regulatory organization shall not have effect unless it has been approved by the Commission under subsection (3).”.

Deletion of Part IXA

39. The principal Act is amended by deleting Part IXA.

Amendment of section 354

40. Section 354 of the principal Act is amended—

- (a) in subparagraph (1)(b)(ii), by substituting for the words “written notice, guidelines” the words “written notice, direction, guideline or practice note”;
- (b) in the proviso to subparagraph (1)(b), by substituting for the words “written notice, guidelines” the words “written notice, direction, guideline, practice note”;
- (c) in paragraph (3)(a), by substituting for the words “written notice, condition” the words “written notice, direction, practice note, condition”; and
- (d) in paragraph (3)(b), by substituting for the words “five hundred thousand” the words “one million”.

Amendment of section 355

41. Section 355 of the principal Act is amended—

- (a) in subparagraph (1)(b)(ii), by substituting for the words “written notice, guidelines” the words “written notice, direction, guideline or practice note”;
- (b) in the proviso to subparagraph (1)(b), by substituting for the words “written notice, guidelines” the words “written notice, direction, guideline, practice note”;
- (c) in paragraph (3)(b), by substituting for the words “written notice, condition” the words “written notice, direction, practice note, condition”; and
- (d) in paragraph (3)(c), by substituting for the words “five hundred thousand” the words “one million”.

Amendment of section 356

42. Section 356 of the principal Act is amended—

- (a) in paragraph (1)(a), by substituting for the words “written notice, guidelines” the words “written notice, direction, guideline, practice note”;

(b) in paragraph (2)(a), by substituting for the words “any guidelines, written notice” the words “written notice, direction, guideline, practice note”; and

(c) in paragraph (2)(b), by substituting for the words “five hundred thousand” the words “one million”.

Substitution of section 369

43. The principal Act is amended by substituting for section 369 the following section:

“False or misleading statement to Commission, exchange or approved clearing house, *etc.*”

369. A person who—

(a) with intent to deceive, makes, furnishes or lodges;
or

(b) knowingly causes, authorizes or permits the making, furnishing or lodging of,

any statement, information or document that is false or misleading, to the Commission, a stock exchange, a derivatives exchange or an approved clearing house relating to—

(A) dealings in securities or derivatives;

(B) the affairs of a listed corporation;

(C) any matter or thing required by the Commission for the due administration of this Act;

(D) any requirement imposed by the Commission under any guideline, practice note, written notice or term and condition; or

(E) any requirement under the rules of a stock exchange, derivatives exchange, or approved clearing house,

commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and

shall also be liable to a fine not exceeding three million ringgit.”.

Deletion of section 371

44. The principal Act is amended by deleting section 371.

Substitution of section 379

45. The principal Act is amended by substituting for section 379 the following section:

“Settlement of disputes

379. (1) The Commission may approve a body corporate to be an approved body corporate for the settlement of disputes in connection with capital market services or products.

(2) An application for approval under subsection (1) shall be made to the Commission in such form and manner as may be specified by the Commission.

(3) Notwithstanding any other written law, the approved body corporate shall put in place rules relating to—

(a) the proper administration of the body corporate as a dispute resolution body; and

(b) the scope, application, operations and procedures of the dispute resolution.

(4) The body corporate shall, as soon as practicable, submit or cause to be submitted to the Commission for its approval any proposed rules or any proposed amendments to existing rules.

(5) The Commission may issue regulations under section 378 in relation to an approved body corporate or make provisions for the settlement of disputes in connection with capital market services or products.”.

Revocation of subsidiary legislation

46. (1) For the purposes of this section and sections 47, 48 and 49—

“effective date” means the relevant date of coming into operation of this Act or the respective provisions of this Act.

(2) The Capital Markets and Services (Prescription of Islamic Securities) Order 2012 [*P.U. (A) 478/2012*] and the Capital Markets and Services (Prescription of Capital Market Product) (Islamic Capital Market Product) Order 2012 [*P.U. (A) 479/2012*] are revoked with effect from the effective date.

Saving and transitional

47. (1) In respect of the continuance of rights and liabilities—

(a) nothing in this Act shall affect any person’s liability to be prosecuted or punished for any offence or breach committed under the principal Act before the effective date or any proceeding brought, sentence imposed or action taken before the effective date in respect of such offence or breach; and

(b) any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.

(2) In respect of Islamic securities, Islamic derivatives or Islamic capital market products prescribed under the Capital Markets and Services (Prescription of Islamic Securities) Order 2012 and the Capital Markets and Services (Prescription of Capital Market Product) (Islamic Capital Market Product) Order 2012—

(a) the Islamic securities, Islamic derivatives or Islamic capital market products shall be deemed to be Islamic securities, Islamic derivatives or Islamic capital market products under the corresponding provisions of the principal Act as amended by this Act with effect from the effective date;

- (b) any action, rule, regulation, order, direction, notification, approval, decision and other executive act howsoever called, made, given or done under, or in accordance with, or by virtue of Division 1 of Part VI of the principal Act before the effective date, shall in so far as it is consistent with the provisions of this Act, be deemed to have been made, given or done under or in accordance with, or by virtue of, the corresponding provisions of the principal Act as amended by this Act, and shall continue to remain in force and have effect in relation to the persons, activities or transactions to whom they apply until amended, revoked or rescinded under, in accordance with, or by virtue of, the corresponding provisions of the principal Act as amended by this Act; and
- (c) any application for an approval, or for any other purpose whatsoever, or any appeal relating to such application, made by any person to the Minister or to the Commission by virtue of Division 1 of Part VI of the principal Act before the effective date, and pending immediately before the effective date, shall be deemed to be made under the corresponding provisions of the principal Act as amended by this Act.

Approved bodies corporate for settlement of disputes in capital market deemed to have been approved

48. (1) Any body corporate approved by the Commission under the Capital Markets and Services (Dispute Resolution) Regulations 2010 [*P.U. (A) 437/2010*] before the effective date shall be deemed to be an approved body corporate under section 379 as introduced by this Act.

(2) In respect of the continuance of other rights and liabilities—

- (a) nothing in this Act shall affect any person's liability to be prosecuted or punished for any offence or breach committed under the principal Act before the effective date or any proceeding brought, sentence imposed or action taken before the effective date in respect of such offence or breach; and

- (b) any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been made.

Registered electronic facility deemed to be recognized market

49. (1) An electronic facility registered under subsection 34(1) of the principal Act before the effective date shall, from that date, be deemed to be a recognized market under this Act.

(2) Any condition or restriction imposed on such electronic facility shall be deemed to be a condition or restriction to its registration under subsection 34(1) as introduced by this Act.

(3) Unless otherwise notified in writing by the Commission, an application for registration as an electronic facility that is pending immediately before the effective date shall be deemed to be an application for a registration as a recognized market operator.

EXPLANATORY STATEMENT

This Bill seeks to amend the Capital Markets and Services Act 2007 (“Act 671”). The proposed amendments seek to provide a new regulatory framework for recognized market, to enable the Securities Commission Malaysia (“Commission”) to transfer the operations of a market institution to a statutory manager, to clarify the Commission’s powers in relation to closure of a stock exchange or derivative exchange, to introduce new provisions on netting and protection of parties’ rights under a qualified capital market agreement, to streamline and modernize take overs and mergers provisions, to increase the amount of penalty in respect of breach of administrative action and to provide for other miscellaneous and consequential matters.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.

3. *Clause 2* seeks to provide for a general amendment to Act 671 by substituting for the words “Securities Commission Act 1993” the words “Securities Commission Malaysia Act 1993”. This general amendment is consequential to the amendment made to the Securities Commission Act 1993.

4. *Clause 3* seeks to amend section 2 of Act 671 to introduce new definitions and to amend or delete existing definitions used in Act 671.
5. *Clause 4* seeks to amend section 5 of Act 671 to empower the Minister to prescribe any product as capital market products, Islamic securities, Islamic derivatives or Islamic capital market products.
6. *Clause 5* seeks to amend section 7 of Act 671 as a consequence of the introduction of a recognized market framework to replace the registered electronic facility framework.
7. *Clause 6* seeks to substitute section 27 of Act 671 to clarify on the Commission's powers in relation to closure of a stock exchange or derivative exchange. This clause provides that the Commission may recommend the Minister to close the exchanges if there are emerging risks with regards to the operations of the exchange and that the Minister may, on the recommendation of the Commission, direct the exchanges to close their markets.
8. *Clause 7* seeks to amend section 30 of Act 671 to enable the Commission to publish a suspension order in relation to an exchange, or the notice of the extension of such suspension order in at least one national language daily newspaper and one English language daily newspaper for the public's information rather than by publishing it in the *Gazette*.
9. *Clause 8* seeks to delete Subdivision 3 of Division 2 of Part II of Act 671 as it has been moved to the new Subdivision 5A of Division 2 of Part II in the Act.
10. *Clause 9* seeks to substitute Subdivision 4 of Division 2 of Part II of Act 671 to provide for a new regulatory framework for recognized market replacing the registered electronic facility. This Subdivision provides for the application of registration of a recognized market operator and the power of the Commission to withdraw a registration and to review the status of a recognized market.
11. *Clause 10* seeks to introduce a new Subdivision 5A into Division 2 of Part II of Act 671 which contains the provisions previously under the deleted Subdivision 3 of Division 2 of Part II. This Subdivision seeks to empower the Commission to transfer control and access of an exchange to a statutory manager as may be appointed by the Commission, for the purposes of managing systemic risk, public interest, etc., the power of the statutory managers and power of the Commission to impose an annual fee or any other fee payable by an exchange. This new subdivision will also provide for the non-application of the provisions in the Companies Act that prohibits the offering of private companies' shares to the public, where the offering of the shares is made on a market regulated under the securities laws.
12. *Clause 11* seeks to introduce a new Subdivision 7 into Division 2 of Part II of Act 671 to safeguard the enforceability of netting provisions for contracts traded on the exchange and contracts facilitated by the clearing house, which include securities borrowing and lending agreements. The new subdivision provides that any powers exercised by the Commission in relation

to the management of systemic risk shall not affect the enforceability of netting provisions for such contracts. The new subdivision also provides that no action by any other regulatory authority under any written law, including power relating to the management of systemic risk or financial stability or power to assume control or managing the business, affairs and properties, may affect the parties' rights under a netting provision or the operation of default proceeding relating to such contracts.

13. *Clause 12* seeks to introduce a new section 59A into Act 671 to provide that a representative of a Capital Markets Services License holder is acting as an agent for the Capital Markets Services License holder and to provide an obligation on a Capital Markets Services License holder to ensure that any agreement entered into does not have the effect of removing, excluding or restricting its obligation or liability as the principal of its representative.

14. *Clause 13* seeks to delete section 89 of Act 671 as the prohibition under this section is redundant given that all license holders will be required to pass the relevant exam conducted by the Commission and possess the relevant experience and qualification before they may apply to be licensed.

15. *Clause 14* seeks to amend section 92A of Act 671 to insert a new subsection (4) to provide for a due diligence defence to a person who has breached this section.

16. *Clause 15* seeks to delete section 94 of Act 671 to allow an employee of a participating organization to purchase securities through another Capital Market Services License holder under certain circumstances.

17. *Clause 16* seeks to delete section 95 of Act 671 as the requirement under this section is already imposed under section 127 of Act 671 relating to the submission of an auditor's report to the Commission and supplemented by the Commission's power to impose any further requirements under section 96 of Act 671.

18. *Clause 17* seeks to introduce a new section 139zs into Act 671 to enable a member to nominate any person to receive any payment or disposal of any part of accrued benefits of the member upon the death of the member.

19. *Clause 18* seeks to amend subsection 160(2) of Act 671 to provide that all contributions paid to the Capital Market Compensation Fund shall not be refunded except as may be specified by the Commission.

20. *Clause 19* seeks to amend section 201 of Act 671 to provide clarity on the application of this section to a tipper in the case of insider trading.

21. *Clauses 20, 21, 22, 23, 24, 25, 26, 27 and 28* seek to amend sections 216, 217, 218, 219, 220, 221, 222 and 223 of Act 671 and introduce new sections 218A, 218B, 218C and 218D into Act 671 relating to take-overs and mergers, to modernize the current provisions, to extend the provision on compulsory acquisitions under section 222 of Act 671 to include convertible securities, to clarify the sanctions that may be imposed when there is a non-compliance with take-over regulations, and to enable the Commission to appoint an

Independent Adviser where the offeree has failed to do so to ensure interest of the minority shareholders are protected.

22. *Clause 29* seeks to substitute subsection 248(1) of Act 671 to provide for the right of a person who acquires, subscribes for or purchases securities to recover for loss or damage as a result of any statement or information contained in any disclosure document or prospectus that is false or misleading, or from which there is a material omission from all or any of the persons set out in paragraphs 248(1)(a), (b), (c), (d), (e), (f) and (g) of the proposed Act.

23. *Clause 30* seeks to substitute section 256 of Act 671 to provide that any provision, clause or term contained in any agreement, contract, document or prospectus given to investors for the purpose of offering for subscription or purchase of securities, as an invitation to subscribe for or purchase securities or to make available securities that purports to exclude or restrict liability shall be void.

24. *Clause 31* seeks to substitute section 256zo of Act 671 to provide that a trustee-manager shall lodge with the Commission the annual report of the business trust within four months after the end of each financial year of the business trust and to remove the requirement for a trustee-manager to lodge the annual report of the trustee-manager with the Commission within six months after the end of each financial year of the trustee-manager as the information contained in an auditor's report which is required under section 127 of Act 671 is sufficient for the Commission in ensuring the operation of a trustee-manager.

25. *Clause 32* seeks to amend section 256zP of Act 671 by inserting a new subsection (3A) to provide for a due diligence defence to a person who has breached this section.

26. *Clause 33* seeks to amend paragraph 273(1)(a) of Act 671 to extend its application to include a disclosure document. It also seeks to amend subsection 273(2) of Act 671 to extend the provision to include where the proposal relating to debentures was lodged with the Commission.

27. *Clause 34* seeks to introduce a new section 280A into Act 671 to impose a duty on a person who knows or becomes aware that the content in an information memorandum or disclosure document is false or misleading, to notify the person who is responsible for the distribution of the debentures of the matter. The person who is responsible for the distribution of the debentures is then required to inform the Commission and any person who has been provided with the information memorandum or disclosure document of the matter.

28. *Clause 35* seeks to amend section 298 of Act 671 to delete the requirement for a management company to lodge the annual report by the management company within six months after the end of each financial year of the management company as the information contained in an auditor's report which is required under section 127 of Act 671 is sufficient for the Commission in ensuring the operation of a management company.

29. *Clause 36* seeks to substitute Division 6 of Part VI of Act 671 to provide for the prescription of Islamic Capital Market Products and Islamic Securities as capital market products and securities for purposes of the securities laws and the application of Division 4 of Part VI in relation to a sukuk or Islamic structured products.

30. *Clause 37* seeks to amend section 319 of Act 671 to provide that a public listed corporation shall submit a copy of its audited annual accounts and its interim and periodic financial reports at the same time when it is submitted, announced or made available to the exchange.

31. *Clause 38* seeks to amend section 325 of Act 671 to provide that the Commission's approval is required for both proposed rules and proposed amendments to the existing rules of a recognized self-regulatory organization.

32. *Clause 39* seeks to delete Part IX_A of Act 671 as the provisions in relation to the Management of Systemic Risk in the Capital Market are now provided for in the Securities Commission Malaysia Act 1993.

33. *Clauses 40, 41 and 42* seek to amend sections 354, 355 and 356 of Act 671 to clarify the application of the sections to include directions and practice notes issued by the Commission. The clauses also seek to increase the penalty amount from five hundred thousand ringgit to one million ringgit, to reflect the severity of the breach and to streamline with the penalty amount imposed under section 220 of Act 671.

34. *Clause 43* seeks to substitute section 369 of Act 671 to clarify on the power of the Commission to take action for false or misleading statement, information or document that is submitted to or lodged with the Commission and to extend its application to include any requirement imposed by the Commission under any guideline, written notice or term and condition.

35. *Clause 44* seeks to delete section 371 of Act 671 as the prohibition is already imposed under section 135 of the Securities Commission Malaysia Act 1993.

36. *Clause 45* seeks to substitute section 379 of Act 671 to enable the Commission to approve a body corporate to be an approved body corporate for the settlement of disputes in connection with capital market services or products and other powers of the Commission with regard to an approved dispute resolution body.

37. *Clauses 46, 47, 48 and 49* provide for the revocation of the Capital Markets and Services (Prescription of Islamic Securities) Order 2012 and the Capital Markets and Services (Prescription of Capital Market Product)(Islamic Capital Market Product) Order 2012, the saving and transitional provisions such as savings for the continuance of rights and liabilities of persons existing prior to the coming into operation of this Act, the providing of a deemed approved status for a dispute resolution body approved under the Capital Markets Services (Dispute Resolution) Regulations 2010, and providing for a registered electronic facility to be deemed as a recognized market.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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