

**CAPITAL MARKET DEVELOPMENT ACT
CAPITAL MARKET DEVELOPMENT (LICENSING AND ACTIVITIES OF BROKERS,
DEALERS AND INVESTMENT ADVISERS) REGULATIONS, 1997 ARRANGEMENT OF
REGULATIONS**

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1. Citation

IN EXERCISE of the powers conferred by sections 35, 42 and 54 of the Capital Market Development Act, the Reserve Bank of Malawi, with the approval of the Minister of Finance, has made the following Regulations:- These Regulations may be cited as the Capital Market Development (Licensing and Activities of Brokers, Dealers and Investment Advisers) Regulations, 1997.

2. Scope of Regulations

These Regulations shall apply to every person, wherever located, conducting business as a broker, dealer or investment adviser:

- (i) with any person domiciled or resident in Malawi;
- (ii) organized under the laws of Malawi which does business as a broker, dealer or investment adviser with any person, wherever located; and
- (iii) wherever organized, doing business from within Malawi as a broker, dealer or investment adviser with any person, wherever located, with respect to such business conducted from within Malawi.

(2) These Regulations shall apply to any person licensed as a government securities broker or dealer under the Government Securities Regulations, 1997, to the extent prescribed in such Regulations.

3. Interpretation; Construction with Other Laws

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

"Act" means the Capital Market Development Act, 1990 (cap 46:06);

"associated person" means any person who is: (i) an officer, director, general manager, managing partner, or branch manager of a broker, dealer or investment adviser; (ii) any person controlling, controlled by or under common control with a broker, dealer or investment adviser; or (iii) any representative or other employee of a broker, dealer or investment adviser, other than employees engaged solely in clerical or ministerial functions for such broker, dealer or investment adviser.

"Bank" means the Reserve Bank of Malawi.

"Banking Act" means the Banking Act, 1984 (cap:44:01) as the same shall be amended from time to time.

"beneficial owner" means a person who directly or indirectly, possesses or shares investment or voting power with respect to that security.

"broker" means any person engaged in the business of buying or selling securities for the accounts of others, but does not include a representative of a broker acting within the scope of his duties as such.

"Collective Investment Scheme" shall have the same meaning assigned to it in the Act, as further defined in the Investment Scheme Regulations.

"Collective Investment Scheme Regulations" shall mean the Capital Market Development (Collective Investment Schemes) Regulations, 1992, adopted under this Act, as the same may be amended from time to time.

"Companies Act" means the Companies Act, 1984 (cap. 46:03), as the same may be amended from time to time;

"company" means a company registered or incorporated under the Companies Act.

"Court" means the High Court of Malawi.

"dealer" means any person engaged in the regular business of purchasing and selling securities for his own account, other than persons engaged in the purchasing and selling of securities in a trustee or other authorized fiduciary capacity, and shall include an underwriter or market-maker.

"Exchange" means the Malawi Stock Exchange.

"exchange rules," in relation to a securities exchange, means any rules made by the exchange that are binding on its members or any of them.

"external licensee" means any broker, dealer or investment adviser licensed or required to be licensed under this Act which is organized under the laws of a jurisdiction outside of Malawi.

"external regulatory authority" means any securities, banking, financial institutions, insurance, pension or other financial regulatory authority, agency or body of a government other than Malawi, and includes any external self-regulatory authority.

"Government securities" means securities issued or backed by the Government of Malawi, including but not limited to Treasury bills issued under section 24 of the Finance and Audit Act (cap. 37:01), or local registered securities registered under section 26 of that same Act.

"government securities broker" or "government securities dealer" means any broker or dealer whose activities requiring a license under this Act are limited to transactions in Government securities.

"investment adviser" means any person who, for compensation, engages in the business of advising others as the purchase, sale or holding, or advisability of investing in, securities, but does not include: (i) any broker or dealer which is licensed under this Act and is engaged in such business solely as an incident to the business of acting as a broker or dealer; (ii) any representative of a broker, dealer or investment adviser acting within the scope of his duties as such; (iii) any bank providing such services exclusively in a capacity as trustee or other fiduciary; (iv) an advocate or accountant whose advice is incidental to his professional activities; or (v) the proprietor or publisher of a newspaper, newsmagazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto or to purchasers thereof, in relation to any advice with respect to investments given therein, where (a) he receives no fee, commission or other consideration for giving or publishing the advice; and (b) the giving or publication of that advice is incidental to the conduct of his business as a newspaper proprietor or publisher.

"issuer" means every person who issues or proposes to issue any security.

"licence" means a licence in force under the Act.

"licenced", when used with respect to a broker, dealer, investment adviser or representative, means such a person licensed under this Act.

"licensee" means any broker, dealer, investment adviser or representative licensed under the Act.

"listed security" means a security which has been admitted to listing by a securities exchange for the purposes of dealing in that security on the exchange.

"open-end investment company" shall have the same meaning as that prescribed in the Collective Investment Scheme Regulations;

"person" means any individual, or any company, partnership, collective scheme, association or similar entity.

"representative" means any person who is employed by a broker, dealer or investment adviser who engages in the solicitation, purchase or sale of transactions in securities, provides advice or recommendations with respect to transactions in securities, or otherwise deals with members of the public with respect to the purchase or sale of securities, or advice with respect thereto.

"securities exchange" means an exchange established and operated by a company licensed to do so under this Act and includes the Malawi Stock Exchange.

"securities market" means a market or other place at which or a facility by means of which: (a) offers to sell, purchase or exchange securities are regularly made or accepted; (b) offers or invitations are regularly made, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly, or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities; or (c) information is regularly provided concerning the prices at which, or the consideration for which, particular persons or particular classes of persons propose, or may reasonably be expected, to sell, purchase or exchange securities.

"self-regulatory authority" means any securities, banking, financial institutions, insurance, pension or other financial regulatory self-regulatory membership body which is supervised by the Bank, or an external governmental authority and which has the authority to promulgate and enforce binding rules and regulations with respect to its members, and includes the Malawi Stock Exchange.

"share" means a share in the capital or a company, and includes the stock or any part of the stock of a company.

A person is subject to a "statutory disqualification" if that person: (a) has been convicted of a crime involving fraud, dishonesty or moral turpitude; (b) is subject to an order or direction, entered by consent or otherwise, of any Malawi or external regulatory authority or self-regulatory authority suspending or barring such person from conducting any securities, commodity trading, financial institutions, insurance or pension scheme business, which order or directive still is in effect; or (c) has associated with him any person subject to a statutory disqualification.

A person is subject to A "statutory restriction" if that person: (a) has been adjudicated a bankrupt; (b) has been adjudicated or found in Malawi or elsewhere to have violated, or caused the violation of any securities, commodities trading, banking, financial services, insurance or pension scheme law, which adjudication or finding still is in effect; (c) has stipulated or consented to the entry of any order or finding with respect to a violation described in subparagraph (b); or (d) has associated with him any person subject to a statutory restriction.

"total indebtedness" of a broker or dealer shall mean the sum of the broker's or dealer's unsecured financial liabilities to all other persons, and includes without limitation funds borrowed or owed to another person, the fair market value (net of all funds or other equivalent value

pledged or deposited in good faith as collateral margin or partial payment) of all securities borrowed, customer free credit balances, and accounts and balances payable arising out of transactions in securities of any kind.

"underwriter" means any person who has purchased from an issuer, or who sells or offers to sell for an issuer, a security with a view to the public distribution of that security, and includes: (a) the purchaser of newly issued securities for the purpose of public resale on behalf of the issuer; (b) the guarantor to an issuer that the unsold portion of the issuer's public issue or sale will be taken up; or (c) any person directly or indirectly participating in such activities; provided, however, that the term "underwriter" shall not include a person participating as a selling dealer or similar capacity in an underwriting whose interest is limited to the receipt of a usual and customary seller's commission, or a commission from an underwriter.

"unit trust" shall have the same meaning as that prescribed in the Collective Investment Scheme Regulations.

"unsecured financial liabilities" shall mean any financial liabilities of a broker or dealer which are not (i) fully secured in accordance with standard financial practices in Malawi by cash, Government securities or such other high-quality liquid collateral as may be specified by the Bank, or (ii) held in a segregated account maintained with a financial institution licensed under the Banking Act for the exclusive benefit of a customer or other person with an independent custodian or depository. A financial liability which is partially secured shall be treated as unsecured in the amount that such liability exceeds the current fair market value of the collateral.

(2) Unless otherwise specified in these Regulations, any other terms used in these Regulations shall have the meaning assigned to them in the Act, if a meaning is so assigned.

PART A: ORGANIZATION AND LICENSING

4. Unlawful Activities

(1) No broker or dealer, or representative of any such broker or dealer, shall purchase or sell, or solicit transactions in, any security without being licensed by the Bank under the Act.

(2) No investment adviser, or representative of any such investment adviser, shall provide any advice with respect to the purchase, sale or holding, or advisability of investing in, securities without being licensed as such by the Bank under the Act.

(3) This section 4 shall not apply to any broker or dealer, or representative of any such broker or dealer, whose business is limited to Government securities and is licensed to do such business under the Capital Market Development Act (Government Securities Brokers and Dealers) Regulations, 1997.

5. Application for Licence; External Companies

(1) An application for a broker's, dealer's or investment adviser's license shall be submitted by a company registered under the Companies Act (except as provided in subsection (2), below), and shall include, at a minimum:-

- (a) the full name and domicile and telephone number of the applicant;
- (b) the date of the applicant's incorporation;

(c) the names, nationalities, domiciles and telephone numbers of all persons, or groups or persons acting in concert, who, directly or indirectly, (i) are beneficial owners of more than five (5) percent of the voting securities of the applicant; or (ii) provide more than five (5) percent of the debt financing or funding of the applicant;

(d) the names, nationalities, domiciles, telephone numbers, biographical details, employment and business experience of all officers, directors, general managers and branch managers of the applicant;

(e) with respect to any person identified in subparagraph (a), (c) and (d) above, whether such person is or has been subject to a statutory disqualification or a statutory restriction;

(f) the types of business in which the applicant proposes to engage: securities brokerage; securities dealing; underwriting; market making; investment advice; or securities clearance and settlement;

(g) a copy of the applicant's application for membership on the Malawi Stock Exchange, if the applicant seeks to conduct business as a broker or dealer;

(h) a copy of the applicant's articles and memorandum of incorporation;

(i) a copy of the applicant's most recent balance sheet, statement of income and statement of cash flows, prepared in accordance with the requirements of the Companies Act, and generally accepted accounting principles as adopted or applied in Malawi; and j) such other information as the Bank, by notice or directive, may specify.

(2) An application for a licence to establish, or to operate as, a broker, dealer or investment adviser by an applicant organized under the laws of a jurisdiction other than Malawi shall contain the following information:-

(a) the information specified in sub section (a) through (i) of subsection (1); provided that, with respect to the information required under subparagraph (1)(f), information shall be provided concerning (i) the types of business in which the applicant is engaged outside of Malawi, and (ii) the types of business in which the applicant proposes to engage in Malawi; and with respect to the information required under subsection (1)(i), such financial information shall be prepared and presented in accordance with generally accepted accounting principles as adopted or applied in the jurisdiction under whose laws the applicant is organized or principally regulated;

(b) the name and domicile of every self-regulatory authority (including any securities or investment management association or organization stock or securities exchange, or commodities, options or futures trading exchange) of which the applicant is a member;

(c) a written consent by the applicant to the submission of the applicant to the jurisdiction of Malawi with respect to any business conducted in Malawi or with persons resident or domiciled in Malawi;

(d) written permission given by the applicant authorizing the Bank to make inquiries of any foreign governmental or self-regulatory authorities concerning the organization, business, financial condition, background, affiliations and regulation of the applicant; and consenting to the release by such foreign authorities of any such information requested by the Bank;

(e) a written designation of a person resident or domiciled in Malawi to accept service of any issued legal process on behalf of the applicant; and

(f) such other information as the Bank, by notice or directive, may specify.

6. Review of Applications; Standards; Decisions

(1) In reviewing any application submitted under Regulation 5, the Bank shall consider:-

- (a) the background, reputation and character of the applicant and its associated persons;
- (b) the applicant's management and affiliations;
- (c) the applicant's ownership and financial conditions;
- (d) whether the applicant is or has been subject to a statutory disqualification or statutory restriction;
- (e) whether the applicant has provided all information required under these Regulations and otherwise requested by the Bank;
- (f) whether the applicant appears reasonably able to comply with the requirements of the Act and these Regulations; and
- (g) whether the applicant has in place policies, procedures and controls adequate to supervise the activities of its associated persons with a view to ensuring compliance with the requirements of the Act and these Regulations.

(2) The Bank may, in its discretion, conduct such inquiries and investigations concerning any applicant as it deems necessary and appropriate under the circumstances, and in the case of an application submitted under subsection (2), may solicit the views of any external government authority or self-regulatory authority with respect to such application.

(3) The Bank shall approve any application if it finds, after consideration of all information submitted by the applicant, and other relevant information obtained by it, that:-

- (a) the application contains all information required under these Regulations or otherwise requested by the Bank;
- (b) the applicant's financial condition and management experience is adequate to enable the applicant to conduct the business for which it seeks to be licensed;
- (c) the applicant appears reasonably capable of complying with the requirements of the Act, these Regulations, and in the case of an application to conduct business as a broker or dealer, the rules and regulations of the Malawi Stock Exchange;
- (d) the applicant appears reasonably likely to conduct its business in accordance with just and equitable principles of trade and prevailing standards of fair dealing;
- (e) the applicant is fit and proper to hold a licence under the Act; and
- (f) approval of the application otherwise is consistent with the purposes of the Act.

(4) The Bank shall take final action on any application within three (3) months after the receipt by the Bank of a complete application containing all information required under these Regulations and otherwise requested by the Bank. The Bank may, upon written notice to the applicant, extend this time period for an additional three (3) months if it determines that additional time is needed to complete its review. Any application filed with the Bank shall be deemed approved upon the

expiration of the three (3) month period provided in this paragraph, or the expiration of any extension of such period, if no final action on such application has been taken by the Bank.

(5) Notwithstanding the requirements of subsections (3) and (4), no application of a broker or dealer shall be deemed approved under this Regulation until and unless the applicant has been admitted to membership on the Exchange; provided, however, that the Bank may exempt an applicant from the requirements of this subsection, if such exemption is in furtherance of the purposes of the Act.

(6) The Bank shall deny any application submitted by an applicant if:-

(a) the application is incomplete in any material respect, or contains any untrue statement of a material fact, or omission of a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(b) the applicant is or has been subject to a statutory disqualification;

(c) the applicant is or has been subject to a statutory restriction unless the Bank affirmatively concludes that the applicant (i) has in place policies, procedures and controls which are reasonably designed to prevent a recurrence of the acts, practice or course of conduct giving rise to the statutory restriction, and (ii) otherwise is fit and proper to hold the licence applied for;

(d) the applicant's financial condition and resources, and management experience, are inadequate to support the business proposed to be conducted by the applicant; or

(e) the applicant does not appear reasonably able to comply with the requirements of the Act and these Regulations, or reasonably able to supervise the activities of its representatives and other associated persons.

7. Licensing of Representatives

(1) An application by an individual for a licence to act as a representative of a licensed broker or dealer shall be submitted to the Stock Exchange Committee of the Malawi Stock Exchange, in such form and containing such information as the Stock Exchange Committee, by rule, notice or directive, shall specify. Such application, however, shall include, at a minimum, information pertaining to:-

(a) the applicant's name, domicile, and nationality;

(b) the applicant's educational, employment and professional experience;

(c) the applicant's financial condition;

(d) whether the application is or has been subject to a statutory disqualification or restriction, or is or has been employed by or associated with a person which is or has been subject to such a disqualification or restriction; and

(e) any securities, commodity trading, banking, investment adviser, financial planner, or other professional licences, currently or previously held by the applicant;

(2) An application by any person to act as a representative of a licensed investment adviser shall be submitted to the Bank, and shall contain such information as the Bank, by notice or directive, shall specify, but including at a minimum that information described in subparagraph (a)-(e) of subsection (1).

(3) No formal approval need be required by the Bank or any self-regulatory authority with respect to the employment by any broker, dealer or investment adviser of a representative seeking to be licensed as such, but the Bank, or the Stock Exchange Committee, as applicable, may issue a notice disapproving the application of any person if it finds that any of the facts and circumstances described in subsection (6) of Regulation 6 apply.

(4) Any application by an individual to act as a licensed representative shall be disapproved if that person is subject to a statutory disqualification, or unless allowed by prior written consent of the Bank, if that person is subject to a statutory restriction.

8. Effect of Licence; Conditions

(1) A licence granted under these Regulations remains in force until suspended, revoked or withdrawn.

(2) A licence under this Part is subject to the terms and conditions attached to it.

(3) A licence may be granted subject to such written conditions as the Bank determines are appropriate in furtherance of the purposes of this Act at the time of licencing, and the Bank may at any time, by notice served on the licensee, vary the conditions for the time being attached to it or impose further conditions.

9. Limitations, Suspensions and Revocations of Licences

(1) Where any person licensed under these Regulations -

(a) being an individual, dies; or

(b) being a company, is dissolved; the licence of that person is deemed to be revoked without action by the Bank;

(2) The Bank may by order or directive place conditions or limitations on, suspend for a period of up to one (1) year, or revoke, a licence of a broker, dealer or investment adviser, or a representative thereof if such person:-

(a) becomes mentally or physically incapable of performing the activities to which the licence relates;

(b) becomes bankrupt, or compounds with his creditors or makes an assignment of his estate for their benefit;

(c) becomes subject of, or engages in any act, practice or course of conduct which would result in, a statutory disqualification or statutory restriction;

(d) is found or adjudicated to have violated, or caused the violation of, the Act or the rules made under the Act;

(e) is or has been guilty of any misconduct in relation to the conduct of his business, or the pursuit of the occupation with reference to which he is licensed or, by reason of any other circumstances, is no longer a fit and proper person to hold a licence under these Regulations;

(f) is unable to meet such applicable financial, solvency and liquidity requirements or other criteria as may be prescribed by the rules made under the Act.

(g) ceases to carry on business in Malawi; or

(h) is the holder of a representative's licence and the licence of the broker, dealer or investment adviser with whom he is associated is revoked or suspended.

(3) Any order or directive given under subsection (2) shall be given by notice in writing to the subject person. Such order or directive may be varied by further written order or directive; and any order or directive may be revoked by the Bank by notice in writing to the subject person.

(4) Prior to the issuance of any order or directive under subsection (2), the Bank shall cause to be served on or delivered to the licensee or subject person a notice containing a statement of the actual or proposed action or course of conduct constituting the reported violation or grounds for action under subsection (2), and specifying a time and place (not less than thirty (30) days after the service or delivery of the notice) at which a hearing will be held to determine whether an order or directive should issue. At the hearing, the Bank shall hear the oral or written views of the subject person, and consider such evidence and information deemed material and relevant. The Bank then shall determine whether the alleged facts have been satisfactorily established, and whether such facts satisfactorily establish an actual or potential action or course of conduct constituting a violation, and upon an affirmative determination, shall issue an order or directive under this section. A copy of such order or directive shall promptly be served on the subject person.

(5) The Bank may revoke a licence at the request of its holder.

(6) A person whose licence is revoked or suspended under these Regulations shall be deemed, for the purposes of the Act, not to be licensed.

(7) Any agreement, transaction or arrangement relating to a transaction in securities entered into by a person whose licence has been suspended or revoked, where the agreement, transaction, or arrangement was entered into after the suspension or revocation of the licence, is voidable at the election of the person(s) with whom such agreement, transaction or arrangement was entered into.

(8) Except as provided in subsection (7), the suspension or revocation of a licence issued under these Regulations shall not affect any right, obligation, or liability arising under any agreement, transaction or arrangement described in subsection (7), or any agreement transaction or arrangement entered into before the suspension or revocation of a licence under these Regulations.

(9) A person whose licence is revoked under these Regulations may not reapply to be licensed hereunder in any capacity until the expiration of at least twelve (12) months from the date of revocation.

(10) In the section, "misconduct" means:-

(a) any contravention of or failure to comply with the requirements of the Act any rules or regulations made under the Act with respect to licensed persons;

(b) any failure to observe the terms and conditions of a licence; or

(c) any act or omission relating to the business or occupation of a licensed person which is inconsistent with just and equitable principles of trade and high standards of dealing, or otherwise is likely to be prejudicial to the interests of members of the investing public.

10. Appeal from Adverse Decisions

(1) A licensee that is dissatisfied by an order or directive of the Bank under Regulation 9 may, within thirty (30) days after the directive is given, appeal to the Court.

(2) The Court may confirm, quash or vary the order or directive of the Bank.

(3) The Court's decision on the appeal shall be final and binding except to any matter of law, and in cases in which the appeal is allowed, it shall be the duty of the Bank to give effect to the Court's decision.

(4) The Bank's directive is not stayed by the lodgement of an appeal, pending the decision of the court.

PART B: FINANCIAL RESPONSIBILITY; CUSTOMER PROTECTION; BOOKS AND RECORDS

11. Capital and Liquidity of Brokers and Dealers

(1) Notwithstanding any other requirement prescribed under these Regulations, every broker or dealer licensed under these Regulations shall maintain at all times a minimum total capital of at least Malawi Kwacha equivalent of one hundred thousand United States Dollars (US\$100,000).

(2) Every broker or dealer licensed under these Regulations shall at all times maintain total capital in an amount not less than (i) fifteen percent (15%) of its total indebtedness if such broker or dealer has been in business for two years or less, or (ii) eight percent (8%) if such broker or dealer has been in business for over two years, unless such broker or dealer qualifies for the alternative capital requirement specified in subsection (3).

(3) A broker which does not hold or carry customer funds or securities, and promptly transmits all customer orders for the purchase or sale of securities to a broker or dealer which is subject to the capital requirements of subsection (2), may maintain capital or amount not less than two percent (2%) of its total indebtedness.

(4) For purposes of this Regulation, "total capital" shall include the current fair market value of all assets reflected in the books and records of the licensee, adjusted to reflect any realised and unrealised gains and losses in securities bought or sold for the account of the broker or dealer, less the following amounts;

(a) fifty percent (50) of the current market or fair value of any assets which cannot be converted into cash or liquid assets within seven (7) business days; including real estate, fixtures, nonsalable personal property and similar items;

(b) the current market or fair value of any debt securities, debt obligations or accounts receivable held by or owed to it which are not fully secured by Government securities or other high quality, readily marketable collateral and are uncollectible or are of doubtful collectability;

(c) fifty percent (50%) of the current market or fair value of debt securities, debt obligations or accounts receivable held by or owed to it which are not fully secured by

Government securities or other high quality, readily marketable collateral and are more than thirty (30) days past due; and

(d) ten percent (10%) of the current market or fair value of any equity securities held in any investment, trading or held for sale account of the licensee.

(5) For purposes of this Regulation, "account receivable" shall include every loan, borrowing, guaranty or indemnity, money owed or similar financial obligation, including any net financial obligation owed to a broker or dealer under the terms of any option, warrant, forward commitment or similar rights given to the broker or dealer.

(6) The "current fair market value" of an asset for purposes of this Regulation shall mean the most recent quoted market sale price of that asset or, in the absence of such a price, the value at which the broker or dealer, in good faith, determines that an asset currently can be sold in the market at an arms-length transaction between parties not acting under duress.

(7) Required capital under this Regulations shall be computed and recorded by the broker or dealer on not less than a weekly basis.

(8) Any broker or dealer which discover that it is not in compliance with the requirements of this Regulations promptly shall give notice of such fact in writing to the Bank and Exchange.

(9) Every broker or dealer shall maintain at all times liquid assets in an amount which shall be equal to one hundred ten (110) percent greater of the lesser of (i) all unsecured financial obligations owed to customers which are due and payable within the next seven (7) business days, and (ii) two (2) percent of its gross assets (i.e, prior to the adjustments specified in subsection (4) above.

(10) The Bank, by notice or directive, may further define or add to the requirements of this Regulation by, among other things, (i) further defining the components of "total capital" or "total indebtedness", (ii) specifying such further additions to and deductions from the same as may be necessary to ensure that the capital or liquidity of the broker or dealer is adequate to ensure the proper conduct of its operations and the protection of customer funds and securities, (iii) specifying capital and liquidity requirements applicable specifically to external brokers and dealers authorized to do business in Malawi, or (iv) adopting such other requirements as necessary and appropriate in furtherance of the purpose of the Act and these Regulations.

12. Capital of Investment Advisers

Every investment adviser licenced under these Regulations shall maintain at all times minimum capital in an amount not less Malawi Kwacha equivalent of fifty thousand United States Dollars (US\$50,000).

13. Withdrawals of Capital

Without prior written approval of the Bank, no capital of a licensee under these Regulations, directly or indirectly, may be withdrawn by action of a stockholder by any means, if such withdrawal would cause the licensee's capital to a decline below one hundred twenty (120) percent of the licensee's capital required under the greater of the amounts specified in subsection (1) or (2) of Regulation 11 in the case of a broker or dealer, or the amount required under Regulation 12 in the case of an investment adviser.

14. Protection of Customer Funds and Securities

(1) No licensee shall use any customer funds held in the form of free credit balances in the conduct of its own business without the prior written consent of the customer, unless such broker or dealer is a bank licensed and supervised under the Banking Act.

(2) Every broker or dealer shall obtain and maintain physical possession or control of all fully-paid securities and other assets carried for the account of a customer. A broker or dealer shall be in compliance with its obligation to obtain prompt physical possession of customer securities if it takes timely and good faith steps, consistent with prevailing commercial standards, to establish prompt physical possession or control once the security is required to be in the possession or control of the broker or dealer.

(3) Securities and other assets of a customer shall be deemed to be in the "control" of a broker or dealer if such securities or assets:-

(a) are held by a custodian which is a bank or financial institution licensed and supervised by the Bank under the Banking Act in a separate account established and maintained for the exclusive benefit of the customers of the broker or dealer, and are adequately segregated from the other assets of the Bank or financial institution, free and clear of any claim, lien, security interest, encumbrance, or charge of the custodian bank or financial institution;

(b) are carried by another broker or dealer which, by written contract with the first broker or dealer, carries such securities and assets in an omnibus account in the name of such broker or dealer for the benefit of its customers, free and clear of any claim, lien, security interest, encumbrance or charge of the clearing broker or dealer;

(c) are in the custody of an external bank or financial institution custodian approved by the Bank;

(d) are physically held by the broker or dealer free and clear of any claim, lien, security interest, encumbrance, or charge of any person or

(e) are maintained in complete and proper book-entry form in an account at an authorized financial institution which properly identifies the securities held in the account and the persons for whose account the securities are maintained, in accordance with applicable requirements of the Bank or other operator of a recognized book-entry system.

(4) No security or asset shall be deemed to be in the possession or under the control of a broker or dealer if the delivery of such security or asset requires the prior payment of any money or item of value.

(5) No licensee shall, without the prior written consent of a customer, pledge, encumber, hypothecate or alienate in any respect such security to or for the benefit of the licensee or an affiliate of the licensee.

15. Fidelity Bonds and Other Insurance

(1) Each licensee shall maintain a blanket fidelity bond, or similar insurance covering officers and employees which provides against loss, and has agreements covering at least the following:-

(a) fidelity;

(b) on premises;

(c) in transit;

(d) misplacement;

(e) forgery and alteration (including cheque forgery);

(f) securities loss (including securities forgery);

(g) fraudulent trading; and

(h) a cancellation rider or endorsement providing that the insurance carrier will use its best efforts to promptly notify the Bank in the event the bond is cancelled, terminated or substantially modified.

(2) Each licensee shall maintain minimum coverage for all insuring agreements required in subsection (1) of not less than Malawi Kwacha equivalent of sixty-five thousand United States Dollars (US\$65,000). or such other minimum coverage as the Bank shall prescribe from time to time.

(3) Each licensee shall annually review, as of the anniversary date of the issuance of the bond, the adequacy thereof by reference to the highest required capital under Regulation 11 or 12, as applicable during the immediately preceding twelve-month period, which amount shall be used to determine minimum required coverage for the succeeding twelve-month period.

(4) Each licensee shall make any required adjustments in its coverage not more than sixty (60) days after the anniversary date of the issuance of such bond.

(5) Each licensee shall report the cancellation, termination or substantial modification of the bond to the Bank and the Exchange (if such licensee is a member thereof) within ten (10) days of such occurrence.

16. Reports to Bank; Financial Statements

(1) Every licensee shall file with the Bank and the Exchange (if it is a member thereof) the following weekly reports within two (2) business days after the end of the business week:-

(a) statements of assets and liabilities;

(b) statements of liquid assets and current liabilities; and

(c) statement of capital and liquidity computed under Regulation 11 or 12, whichever is applicable; and

(d) such other information as the bank by notice or directive may specify.

(2) Every licensee shall file with the Bank and the Exchange (if it is a member thereof) the following monthly reports within five (5) business days after the end of the month:-

(a) statements of assets and liabilities;

(b) statement of income;

(c) statement of cash flows;

(d) statement of security positions reported on a mark-to-market basis, classified by debt, equity and other securities; by issuer; held for investment and held for sale; and securities held in underwriting, dealing and trading accounts.

(e) statement of aggregate off-balance-sheet commitments, contingencies and liabilities; and

(f) such other information as the Bank by notice or directive may specify.

(3) Every licensee shall file with the Bank and the Exchange (if it is a member thereof) the following audited annual reports within ninety (90) days after the end of the financial year;

(a) balance sheet;

(b) statement of income;

(c) statement of cash flows; and

(d) such other unaudited information as the Bank by notice or directive may specify.

(4) External licensees shall prepare the same weekly, monthly, and quarterly reports as are required for local licensees with respect to their operations in Malawi.

(5) Upon application to the Bank, external licensees may be permitted to submit audited consolidated financial statements with respect to their worldwide operations. Such permission will be granted on a case-by-case basis, in order to allow the Bank the opportunity to assess the quality of financial reporting by an external licensee, as well as the nature, scope and adequacy of generally accepted auditing standards and accounting principles in the external licensee's home country of operations.

17. Books and Records of Licensees

(1) Every licensee which is a broker or dealer shall make, keep current the following books and records:-

(a) blotters (or other records of original entry) containing an itemized daily record of all purchase and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each transaction was effected, the

name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom the securities were purchased or received or to whom the securities were sold or delivered;

(b)ledgers (or other records) reflecting all assets and liabilities, income and expenses, and capital accounts;

(c)ledger accounts (or other records) itemizing separately as to each account of every customer and of such licensee, and subsidiaries and affiliates thereof, all purchases, sales, receipts and deliveries of securities and other assets for such account and all other debits and credits to such account;

(d)ledgers (or other records) reflecting the following:

(i)securities in transfer;

(ii)dividends and interest received

(iii)securities borrowed and securities loaned;

(iv)monies borrowed and monies loaned (together with a record of the collateral thereof and any substitutions in such collateral);

(v)securities failed to receive and failed to deliver;

(vi)all long and short securities record differences arising from the examination, count, verification and comparison pursuant to customary audit practices under applicable law; and

(vii)repurchase and reverse purchase agreements;

(e)a securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including) securities in safekeeping and securities that are the subjects of repurchase or repurchase agreements) carried by such licensee for its account or for the account of its customers or others and showing the location of all securities long and the offsetting position of all securities short;

(f)a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted;

(g)a memorandum of each purchase and sale for the account of the licensee showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order, and the account in which it was entered;

(h)copies of confirmations of all purchases and sales of securities, and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers, the licensee, and affiliates and subsidiaries of such licensee;

(i)a record in respect of each customer account with the licensee indicating the name and address of the beneficial owner of such account;

(j)a record of all puts, calls, spreads, straddles, and other options in which such licensee has any direct or indirect interest or which such licensee has granted or guaranteed, containing, at least, an identification of the security and the number of units involved;

(k) a record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate assets, liabilities and capital of the licensee;

(l) a questionnaire or application for employment executed by each "associated person" of such licensee, which questionnaire or application shall be approved in writing by an authorized representative of the licensee and shall contain full biographical, employment, licensing and disciplinary information on the employer; and

(m) such other information as the Bank by notice or directive may specify.

(2) Every licensee which is an investment adviser shall make, keep current the books and records specified in subparagraph (a) through (c), (f) through (i), (k), (1) and such other information as the Bank by notice or directive may specify.

(3) Every licensee shall maintain a separate file of all letters or other written communications lodging a complaint with the licensee concerning the licensee or any associated person of the licensee, or making or asserting any claim for damages or loss resulting from the conduct of the licensee or any associated person of the licensee, and the resolution or disposition of such claim by the licensee.

(4) Every licensee shall maintain and keep for a period of six (6) years in a secure place at its main office, or other readily accessible location, in physical or secure electronic format, the following records:-

(a) The books, records, accounts and communication described in subsections (1), (2) or (3), whichever is applicable;

(b) all bank statements, credit and debit items, and other bank account records of the licensee;

(c) all accounting and audit workpapers required to be maintained under the Companies Act;

(d) all records which contain information supporting the reports and other statements required to be filed with the Bank or maintained under these Regulations; and

(e) such other records as the Bank by notice or directive may specify.

PART C: ACTIVITIES OF BROKERS, DEALERS AND INVESTMENT ADVISERS

18. Adherence to Just and Equitable Principles of Trade

(1) In the conduct of its business, every licensee shall at all times adhere to just and equitable principles of trade, and high standards of fair dealing and ethical conduct.

(2) A licensee doing business with the public, or holds itself out as doing business with the public, is deemed to represent at all times that its business is conducted within the standards of subsection (1).

19. Suitability

(1) In recommending to a customer the purchase, sale or exchange of any security, a licensee shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(2) Prior to the execution of a transaction recommended to a customer, other than another licensee, bank, financial institution or other institutional investor with total assets of at least the kwacha equivalent of one hundred ninety-five thousand United States Dollars (US\$195,000), a licensee shall make reasonable efforts to obtain information concerning:

- (a) the customer's financial status;
- (b) the customer's tax status;
- (c) the customer's investment objectives; and
- (d) such other information used or considered to be reasonable by such licensee or registered representative in making recommendations to the customer.

20. Best Execution; Interpositioning; Priority of Transactions

(1) A licensee and its associated persons shall take reasonable steps to ensure that all transactions effected for customers, whether by the licensee or a person acting at the directive of licensee, are effected at the best price available for the customer under all the circumstances of the transaction, including the size thereof, the customer's restrictions, the fees charged in relation thereto, and other relevant factors. Among the factors which shall be considered in applying the standard of "reasonable steps" are:-

- (a) The character of the market for the security, e.g price, volatility, and relative liquidity;
- (b) the size and type of transaction;
- (c) the number of primary markets checked; and
- (d) location and accessibility to the licensee of primary or trading markets and quotation sources.

(2) In any transaction for or with a customer, no licensee or person associated with a licensee shall interject a third party between the licensee and the best available market except in cases where the licensee can demonstrate that to his knowledge at the time of the transaction the total cost or proceeds of the transaction, as confirmed to the licensee acting for or with the customer, was better than the prevailing market for the security. A licensee's obligations to his customer are generally not fulfilled when he directs transactions through another broker/dealer or some person in a similar position, unless he can show that by so doing he reduces the costs of the transactions to the customer.

(3) A licensee may direct customers' orders through another broker pursuant to established contractual relationships under which executions are confirmed directly to the licensee acting as agent for the customer, if the cost of such service not borne by the customer; provided, however, that no broker may direct orders through a third party as described above as reciprocation for service or business given to the licensee by the third party or otherwise operate to relieve a licensee of his obligations.

(4)A licensee through whom a customer order is directed, as described in subsection (3) above, and who knowingly is a party to any arrangement whereby the imitating licensee has not fulfilled his obligations under this Regulation, will also be deemed to have violated this Regulation.

(5)Every licensee shall establish and adhere to written procedures reasonably designed to ensure that customer transactions are effected in fair sequence and are equitably allocated, and without giving preference to itself or any customer over another customer.

(6)The obligations described in this Regulation exist not only where the licensee acts as agent for the account of his customer but also where retail transactions are executed as principal and contemporaneously offset.

(7)In any transaction for or with a customer pertaining to the execution of an order in a security not traded on a securities exchange, a licensee or person associated with a licensee shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best market for the subject security.

21.Commissions, Concessions, Fees and Sales Charges

No licensee shall charge any customer any sales charge, commission, markup or markdown, concession, fee or similar charge which is unreasonable or excessive under the facts and circumstances of the transaction.

22.Contract Notes

(1)Every broker and dealer shall, in respect of every contract for the purchase, sale or exchange of securities entered into by him (whether as principal or agent), not later than the end of the next trading day after the contract was entered into, make out a contract note which contains at a minimum the following information:-

(a)the name or style under which the broker or dealer on business and the address of the principal place at which it so carries on business;

(b)where broker or dealer is acting as principal, a statement that is so acting;

(c)the name of the person (if any) to whom the broker or dealer is required to give the contract note;

(d)the date of the contract, and the date on which the contract or dealer is made out;

(e)the quantity and description of the securities which are the subject of the contract;

(f)the price per unit of the securities;

(g)the amount of consideration payable under the contract or, in the case of an exchange, sufficient particulars of the securities exchanged to identify them;

(h)the rate or amount of commission (if any) payable in respect of the contract;

(i)the amount of stamp duty (if any) payable in connection with the contract and, where applicable, in respect of the transfer;

(j)the date of settlement; and

(k)such other information as the Bank may require by notice or directive to ensure that there shall be a complete audit trail for the execution of customer instructions and settlement of market transactions.

(2)Any contract note which seeks to exclude or disclaim any obligation required under this Act shall, with respect to such exclusion or disclaimer, be void and of no effect.

23.Account Statements

(1)Each licensee shall maintain an account for each customer containing at least the following information:-

(a)the customer's name and residence

(b)whether the customer is of legal age;

(c)the signature of the representative introducing the account and signature of the officer or manager who accepts the account;

(d)if the customer is a corporation, partnership, or other legal entity, the names of any persons authorized to transact business on behalf of the entity;

(e)the customer's tax identification information;

(f)the occupation of the customer and name and address of his employer; and

(g)whether the customer is an associated person of another licensee.

(2)For discretionary accounts, in addition to the information required under subsection (1), the licensee shall:-

(a)obtain the signature of each person authorized to exercise discretion in the account;

(b)record the date such discretion is granted; and

(c)record the age or approximate age of the customer.

(3)Each licensee shall, with a frequency of not less than once every calendar quarter, send a statement of account containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer.

(4)For purposes of this Regulation, the term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer

activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the licensee.

(5) Notwithstanding the foregoing definition, a licensee which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this Regulation.

(6) The bank may, pursuant to a written request for good cause shown, exempt any licensee from provisions of this Regulation.

24. Exchanges of Securities; Agency Cross-Trades

(1) A licensee who purchases or arranges the purchase of securities taken in trade, shall purchase the securities at a fair market price at the time of purchase or shall act as agent in the sale of such securities and charge a normal commission thereof.

(2) A licensee who purchases a security taken in trade shall keep or cause to be kept adequate records to demonstrate compliance with this Regulation and shall preserve the records for at least twenty-four (24) months after the transaction. If an independent agent is used for the purpose of obtaining quotations, the licensee must request the agent to identify the dealers from whom the quotation were obtained and the time and date they were obtained or request the agent to keep and maintain for at least twenty-four (24) months a record containing such information.

25. Securities of Collective Investment Schemes

(1) No licensee which is an underwriter of the securities of a collective investment scheme authorized by the Bank shall sell any such security to any dealer or broker at any price other than the public offering price and, if the security is issued by an open-end investment company, unless a sales agreement is in effect between the parties as of the date of the transaction, which agreement shall set forth the fees, charges, and other compensation to be received by the dealer or broker.

(2) No licensee shall offer or sell the shares of any collective investment scheme if the sales charges are excessive.

(3) No underwriter or associated person of an underwriter shall offer, pay, or arrange for the offer or payment to any other licensee, in connection with retail sales or distribution of collective investment scheme securities, any discount, concession, fee or commission which is not fully disclosed in the prospectus.

(4) No underwriter or associated person of an underwriter shall offer or pay any concession to an associated person of another licensee, but shall make such payment only to the licensee.

(5) In connection with retail sales or distribution of collective investment scheme shares, no underwriter or associated person of an underwriter shall offer or pay to any licensee or associated person, anything of material value, and no licensee or associated person shall solicit or accept

anything of material value, in addition to any concessions, fees and charges disclosed in the prospectus.

(6) Licensees (including underwriters) that engage in direct retail transactions in collective investment schemes shall transmit payments received from customers for such shares, which such licensees have sold to customers, to payees (i.e., underwriters, investment companies or their designated agents) by (a) the end of the third business day following a receipt of a customer's order to purchase such shares or (b) by the end of one business day following receipt of a customer's payment for such shares, whichever is the later date.

26. Short Sales

(1) No broker or dealer shall sell for its own account any security of which it is not the owner.

(2) No broker or dealer shall sell for the account of any customer any security of which the customer is not the beneficial owner, and with respect to which the broker or dealer is an underwriter or market-maker.

(3) In the case of any security traded on the Exchange, no member broker or dealer shall effect any short sale transaction for the account of a customer at a price which is lower than the immediately preceding last sale price for that security.

27. Purchases or Carrying of Securities on Margin

No broker or dealer shall, directly or indirectly, extend, arrange or maintain credit to any person for the purpose, whether direct, ultimate or incidental, of purchasing or carrying securities unless such extensions, arrangement or maintenance is at all times fully secured by Government securities, or securities which are listed or traded on the Exchange or such other recognized securities exchange or securities market as the Bank may designate in writing, with a current market value of at least two hundred (200) percent of the amount of the extension, arrangement or maintenance of credit adjusted on a daily basis to reflect changes in the value of such collateral.

28. Transactions in Options

No licensee shall, directly or indirectly, effect for its own account or the account of a customer, any transaction in any put, call, warrant, right or other option with respect to any security listed or traded on the Exchange or which is issued by an issuer organized under the laws of Malawi.

29. Agreements with Customers

(1) Every licensee, before purchasing or selling any security for the account of a customer, or providing investment advice to any customer, shall execute with a customer agreement containing, at a minimum, the following information:

- (a) the name, domicile and nationality of the customer and, if the customer is a business entity, the laws under which the customer is organized;
- (b) the full name, main address and branch office of the licensee providing the services in question;
- (c) the nature of the services that the licensee will provide;
- (d) particulars of any fees, commission, advisory charges or other remuneration to be paid by the customer to the licensee;
- (e) the term of the agreement;
- (f) whether the agreement permits the effecting of transactions by the licensee on a discretionary basis, and the terms and conditions under which such discretion is to be exercised;
- (g) a description of the account statements and report which the licensee will provide to the customer;
- (h) a description of how the customer agreement may be terminated either by the customer or the licensee, and the consequences to the licensee and such customer of such termination;
- (i) instructions on procedures which the customer may follow to file a complaint with the licensee concerning the handling of his account;
- (j) a statement of the customer's rights to compensation if the licensee cannot meet any of its liabilities to the customer;
- (k) suitability of information concerning the customer of a nature and type which complies with Regulation 19;
- (l) any restrictions on the types of investments or activities which the licensee shall perform for the customer;
- (m) a statement of the licensee's obligations and rights with respect to the handling of customer funds and securities, if the licensee will handle customer funds and securities, including statements concerning any custodial arrangements to be made for the account of the customer;
- (n) if the licensee uses a clearing broker or dealer, the full name and address of the clearing broker or dealer;
- (o) any arrangements pursuant to which the customer may be loaned money by the licensee;
- (p) full disclosure of any conflicts of interest or material interests which the licensee may have with respect to the business of the customer;
- (q) whether the licensee may act as a principal with the customer, and
- (r) any other terms and conditions necessary to fully spell out the rights and obligations of the licensee and the customer.

(2)Every customer agreement shall provide, at a minimum, that the termination thereof shall be without prejudice to the completion of transactions already initiated, and that the customer may terminate the agreement by written notice to the licensee, which may take effect immediately upon receipt.

(3)Every customer agreement under this section, prior to being accepted by the licensee, shall be reviewed by a supervisory manager to ensure compliance with the requirements of the Act, and these Regulations. The signature of the supervisory manager on the customer agreement shall constitute evidence that the account has been reviewed in compliance with the requirements of this subsection.

(4)Any provision in any customer agreement which seeks or purports to waive or limit, in any respect, the rights of any customer under the requirements of the Act and these Regulations shall be void and of no legal effect.

PART D: SUPPLEMENTAL REQUIREMENTS FOR INVESTMENT ADVISERS

30. Contracts of Investment Advisers

(1)An investment adviser shall not enter into an investment advisory contract with any person domiciled or resident in Malawi (in this section referred to as his client), or extend or renew any such contract, or in any way perform any such investment advisory contract entered into, extended or rendered after the commencement of the Act, if the contract:-

(a)provides for remuneration to be paid by the client to the investment adviser on the basis of a share of capital gains of the funds or any part of the funds of the client;

(b)does not include a provision to the effect that an assignment of the contract by the investment adviser shall be made only with the consent of the client; or

(c)does not include a provision to the effect that the investment adviser:-

(i)if he practices in partnership with one or more other investment advisers, will notify the client of any change in the partnership; or

(ii)if a company, will notify the client of any change in control of the company, prior to the change within a specified time, which time shall not be less than thirty (30) days.

(2)Subsection (1) (a) shall not:-

(a)prohibit an investment advisory contract which provides for remuneration based on the total assets held in the client's account averaged over a definite period or on definite dates, or taken on a definite date; or

(b)apply to an investment advisory contract with respect to participation in a collective investment scheme, authorized by the Bank under the Collective Investment Scheme

Regulations that provide for remuneration based on the asset value of the scheme or company under management averaged over a specified period and increasing and decreasing proportionately in accordance with the performance of the scheme or company over a specified period in relation to either (i) the investment record of a generally-recognized index of securities, or (ii) such other measure of investment performance as the Bank may approve in connection with its authorization of the collective investment scheme concerned or on the application of either party to a contract or intended contract.

(3)For the purposes of this section "investment advisory contract" means a contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account of a client.

(4)Any contract entered into in contravention of any of the provisions of this section shall, notwithstanding any provision of the contract, be voidable at the option of the client.

31.Disclosures to Customers

(1)Every licenced investment adviser shall, in accordance with the requirements of this regulation, furnish each advisory client and prospective client with a written disclosure statement containing substantially the information specified in subsection (2) hereof. Such statement shall be delivered to the client or prospective client not later than the time at which a written agreement with the client is executed, and thereafter shall be delivered to the client on at least an annual basis.

(2)The disclosure statement described in subsection (1) shall contain, at a minimum, the following information:-

(a)a full description of investment advisory services and fees;

(b)the types of clients to which the licensees provides investment advice;

(c)the types of securities and other investments with respect to which the licensee offers investment advice;

(d)methods which the licensee uses to analyze investment and related information, the sources of such information, and investment strategies used by the licensee;

(e)any general standards of education or business experienced which the licensee requires of its associated persons performing the business of the licensee.

(f)the education and business background of each member of any managing investment committee or group that determines general investment advice to be given to clients, and/or each individual who determines general investment advice given to clients;

(g)a full description of other business activities in which the applicant is actively engaged, including products or services other than investment advice that are provided by the licensee to its customers;

(h)a description of other financial industry activities or affiliations of the licensee;

(i)the particulars as to the nature and extent of any participation or interest in client transactions which the investment adviser has, and any conflicts of interest arising out of such participation or interest;

(j)any conditions imposed by the licensee for the managing of accounts of customers;

(k) procedures by which customer accounts are reviewed by the licensee for purposes of ascertaining compliance with the Act and these Regulations, as well as the terms and conditions of any advisory agreement with a customer.

(l) whether the licensee exercises investment discretion on behalf of the customer;

(m) any compensation or other referral arrangements which the licensee has established with any other person; and

(n) in the case of a licensee which maintains custody of client funds or securities, balance sheet for the most recent financial year for the licensee.

(3) Every licensee shall furnish to the Bank a copy of the most recent brochure prepared by the licensee under the Regulation within three (3) days prior to the first use thereof.

(4) Whenever any information contained in a disclosure statement required under this Regulation becomes inaccurate or misleading in any material respect, the licensee shall notify each of its customers in writing to this effect, explaining the full particulars of the inaccuracy and making such supplemental disclosures as are necessary to correct or update the disclosure statement to remove such inaccuracies.

PART E: ASSOCIATED PERSONS

32. Qualifications and Training

Every licensee shall adopt and enforce written policies and procedures which are designed to ensure that:-

(1) every representative possesses (or, in the case of a new representative, receives) such training and experience in investment and financial matters sufficient to enable him to deal fairly, competently and knowledgeably with customers;

(2) every representative is informed of the requirements of the Act, these Regulations, and any rules and regulations of any self-regulatory authority of which the licensee is a member; and

(3) every representative is subject to appropriate and meaningful continuing education requirements with respect to the matters referred to in subsections (1) and (2).

33. Investigations; Disqualified Persons

(1) Prior to employing any representative, a licensee shall conduct such inquiries into the background, qualifications, experience and integrity of the representative which is sufficient to ensure that such representative reasonably satisfies the requirements of Regulation 7.

(2) No licensee shall employ as a representative any person who is subject to a statutory disqualification or, without the prior written consent of the Bank, who is subject to a statutory restriction.

34. Supervisory Requirements

(1) Each licensee shall establish and maintain a system to supervise the activities of each licensed representative and associated person that is reasonably designed to achieve compliance with the Act and the Regulations. Final responsibility for proper supervision shall rest with the licensee.

(2) A licensee's supervisory system shall provide, at a minimum, for the following:

(a) the establishment and maintenance of written designations, policies and procedures as provided in subsection (2) and (3) of this Regulation;

(b) the designation, where applicable, of a supervisory manager with authority to carry out the supervisory responsibilities of the licensee for each type of business in which it engages for which licensing as a broker or dealer or investment adviser is required;

(c) the designation as a branch office of each location where the licensee conducts any securities business with the public;

(d) the designation of one or more supervisory managers in each branch office, including the main office, with authority to carry out the supervisory responsibilities assigned to that office by the licensee;

(e) the assignment of each representative to an appropriate supervisory manager who shall be responsible for supervising that person's activities;

(f) reasonable efforts to determine that all supervisory managers are qualified by virtue of experience or training to carry out their assigned responsibilities; and

(g) the participation of each representative, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the licensee at which compliance matters relevant to the activities of the representative(s) are discussed;

(3) Each licensee shall designate and specifically identify to the Bank and each self-regulatory authority of which the licensee is a member one or more managers who shall review the supervisory systems, procedures, and inspections implemented by the licensee as required by this Regulation and take or recommend to senior management appropriate action reasonably designed to achieve the licensee's compliance with the Act, these Regulations and the rules of any self-regulatory authority of which the licensee is a member.

(4) The licensee's written supervisory procedures shall set forth the supervisory system established by the licensee pursuant to subsection (2) above, and shall include the titles, registration status and locations of the required supervisory personnel and the responsibilities of each supervisory person as these titles relate to the types of business engaged in. The licensee shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates of which such designation was or is effective. Such record shall be preserved by the licensee for a period of not less than three (3) years.

(5) A copy of a licensee's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained at the main office and in each branch office. Each licensee shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable laws and regulations, including the Act and the Regulations, and as changes occur in its supervisory system, and each licensee shall be responsible for communicating such changes or amendments through its organization.

(6) Each licensee shall conduct a review, at least annually, of the businesses in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with the Act and Regulations. Each licensee shall review the activities of

each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and at least an annual inspection of each branch office. Each branch office of the licensee shall be inspected according to a cycle which shall be set forth in the firm's written supervisory and inspection procedures. In establishing such cycle, the licensee shall give consideration to the nature and complexity of the securities activities for which the location is responsible, and the volume of business done, and the number of associated persons assigned to the location. Each licensee shall retain a written record of the dates upon which each review and inspection is conducted.

(7) Each licensee shall establish procedures for the review and endorsement by a supervisory manager in writing, on an internal record, of all transactions and all correspondence of its registered representatives pertaining to the recommendation, solicitation or execution of any securities transaction.

35. Employment Transactions

(1) Every licensee shall adopt and enforce written policies and procedures to ensure that all transactions in securities effected for the account of any officer, director, representative or employee of the licensee, or any affiliate thereof, are disclosed to the licensee prior to the transaction, and are reviewed by an independent supervisory manager for compliance with the requirements of the Act, these Regulations, and other applicable laws.

(2) No license shall effect, recommend or cause to be effected any transactions in any security for the account of an officer, director, representative or employee of another licensee, or any affiliate of another licensee, without first reporting any such proposed transaction to that other licensee. Every licensee shall adopt and enforce written policies and procedures to ensure that the employment of any person seeking to effect securities transactions through such licensee is adequately verified.

36. Actions Against Employees

(1) Every licensee shall report in writing to the Bank, and every self-regulatory authority of which the licensee is a member, any action to terminate the employment or association of any director, officer, representative or employee of the licensee, including the reason and full particulars of such termination.

(2) For purposes of this Regulation, a "termination" includes

(i) any action to involuntarily separate the subject person from employment or association with a licensee,

(ii) any resignation or withdrawal by such person from employment or association with the licensee, after such person has been informed of the licensee's intention to terminate the employment or association of the subject person, or

(iii) any voluntary resignation or withdrawal by such person which is accepted by the licensee in lieu of termination.

37. Reporting of Disciplinary Actions

(1) Each licensee shall promptly report to the Bank, and any self-regulatory authority of which the licensee is a member, whenever such licensee or person associated with the licensee:-

(a) has been found to have violated any provision of any securities law or regulation, any Regulation or standards of conduct of any governmental agency, self-regulatory

authority, or financial business or professional organization, or engaged in conduct which is inconsistent with just and equitable principles of trade;

(b) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

(c) is named as a defendant or respondent in any proceeding brought by a regulatory or self-regulatory authority alleging the violation of any provision of the Act, or of any other Malawi or external securities, commodities trading, banking, financial institutions, insurance, pension scheme, or financial services law or regulation thereunder, or of any provision of the rules, regulations or similar governing instruments of any Malawi or external self-regulatory authority;

(d) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry regulatory or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any licensee of any such self-regulatory organization;

(e) is indicated, or convicted of, or pleads guilty to, or pleads no contest to, any criminal offense (other than traffic violations);

(f) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment adviser, market-maker, underwriter of insurance company which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution which was convicted of or pleaded no contest to, any felony or misdemeanor;

(g) is a defendant or respondent in any securities, commodities trading, banking, financial institutions, insurance or pension-related civil litigation or arbitration which has been disposed of by judgment, award or settlement for an amount exceeding one the kwacha equivalent of six thousand five hundred United States Dollars (US\$6,500);

(h) is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding the kwacha equivalent of six thousand five hundred United States Dollars (US\$6,500);

(i) is associated in any business or financial activity with any person who is subject to a statutory disqualification or statutory restriction, and providing the name of the person subject to the statutory disqualification or restriction and details concerning the disqualification or restriction; or

(j) is the subject of any disciplinary action taken by the licensee involving suspension, termination, the withholding of commissions or imposition of fines in excess of the kwacha equivalent of thirty-two thousand six hundred United States Dollars (US\$ 32,600) or otherwise disciplined in any manner which has resulted in a significant limitation on the individual's activities on a temporary or permanent basis.

(2) Each person associated with a licensee shall promptly report to the licensee the existence of any of the conditions set forth in subsection (1) of this Regulation. Each licensee shall report to the Bank, and any self-regulatory authority of which the licensee is a member, not later than ten (10) business days after the licensee knows or should have known of the existence of any of the conditions set forth in subsection (1) of the Regulation.

(3) Each licensee shall report to the Bank, and any self-regulatory authority of which the licensee is a member, statistical and summary information regarding customer complaints in such detail as the Bank shall specify, by the 15th day of the month following the calendar quarter in which customer complaints are received by the licensee.

PART F: PROHIBITED ACTIVITIES: CONFLICTS OF INTEREST

38. Manipulated and Deceptive Acts and Practices

(1) No broker, dealer or investment adviser licensed under the Act. or any person associated with such a broker, dealer or investment adviser shall, in connection with any securities transaction effected or recommended by the licensee or associated person:-

(a) engage in any fraudulent, deceptive or manipulative devices or contrivances, any schemes to defraud, or any acts, practices, or courses of conduct which act or would act as a fraud or artifice upon any person;

(b) effect in a discretionary capacity or recommend transactions to any customer which are excessive in volume and number, given the customer's financial situation or investment objectives;

(c) share or offer to share in the profit or loss of any customer in any securities transaction, or guarantee any profit or protection from loss of any transaction;

(d) effect or recommend any securities transaction which has the purpose or effect of creating a false or misleading appearance of the volume of trading in any security, or the market for or price of, a security; or

(e) effect or recommend any securities transaction which has the purpose or effect of maintaining, inflating, depressing, or causing fluctuations in the market price of a security, provided, however, that this subparagraph shall not prohibit market-making or stabilization transactions undertaken in compliance with the rules of a securities exchange;

(2) No licensee, or any associated person or affiliate of a licensee, shall, directly or indirectly, create or cause to be created, or do anything with the intention of creating-

(a) a false or misleading appearance of the volume of trading in any securities on any securities exchange; or

(b) a false or misleading appearance of the market for, or the price of, any such securities.

(3) No licensee, or any associated person or affiliate of a licensee, shall, directly or indirectly, by means of the purchase or sale of any security that does not involve a change in the beneficial ownership of that security, or by any fictitious transaction or device, maintain, inflate, depress or cause fluctuations in the market price of any security.

(4) A purchase or sale of securities by a person does not, for the purposes of subsection (4), involve a change in the beneficial ownership if a person associated with the first person is a beneficial owner of such securities after the purchase or sale.

(5) No licensee shall represent, state or imply, in any manner, directly or indirectly, that any licence or authorization granted by the Bank under these Regulations constitutes an endorsement or recommendation by the Bank of such licensee, or any activities conducted by such licensee;

provided, however, that a licensee may disclose the fact that it has received a licence to conduct business under these Regulations.

39. Prohibited Practices of Investment Advisers

(1) No investment adviser licensed under these Regulations shall -

(a) use, deliver, send or publish, or cause to be used, delivered, sent or published, any advertisement, circular or other communication with the public which, directly or indirectly, contains or refers to any testimonial of any kind concerning the investment adviser or any advice or report prepared by the investment adviser;

(b) use, deliver, send or publish, or cause to be used, delivered, sent or published, any advertisement, circular or other communication with the public which, directly or indirectly, refers to specific recommendations and the performance of the investment adviser, other than an advertisement which describes or makes available a list of all recommendations made by such adviser within an immediate preceding period of time (in no case to be less than one year), including a description of specific securities recommended, and containing cautionary language that states that performance of past recommendations should not be considered a guarantee of the performance of any future recommendations;

(c) use, in the course of conducting its business with the public, any graph, chart, formula or other device without disclosing to customers the limitations in the use of such device;

(d) make any untrue statement of a material fact, or otherwise false and misleading statement, in the course of conducting its business as an investment adviser.

(2) No investment adviser licensed under these Regulations shall directly or indirectly, pay to any person money, services, financial benefits or other valuable consideration with respect to the referral or solicitation of business to the investment adviser, unless:-

(a) the person to whom the payment is made is not subject to a statutory disqualification or statutory restriction;

(b) payment is made pursuant to a written agreement between the investment adviser and such person;

(c) the full particulars of such contract are fully disclosed to each client of the investment adviser which is referred by the person receiving such payment, including full particulars as to the amount of compensation or other valuable consideration paid to such person.

(3) Every licensed investment adviser shall disclose to its customers whether it has been, at any time, subject to a statutory disqualification or statutory restriction.

(4) No licensed investment adviser shall effect, or cause to be effected, for its own account, any transaction in a security which is recommended to customers, unless the licensee discloses to the customer all material facts concerning the licensee's interest in such securities.

(5) No licensed investment adviser shall effect any transaction in any security for its own account prior to making recommendations with respect to such security to its customers.

40. Trading on Nonpublic Information

(1) Every licensee shall adopt and enforce written policies and procedures reasonably designed to prevent securities transactions by the licensee, any associated person of the licensee, or other affiliated person of the licensee, on the basis of nonpublic material information with respect to any security or the issuer thereof, and to supervise the securities transactions of such persons with a view to preventing transactions on the basis of such material nonpublic information.

(2) A licensee may adopt and enforce policies and procedures requiring the nondisclosure of material nonpublic information obtained by the licensee in the course of conducting its business to other associated persons of the licensee conducting other business of the licensee, in order to prevent the misuse of such information by such other persons.

(3) Any licensee which fails reasonably to adopt and enforce policies and procedures described in subsection (1) will be liable for any violation of the Act or these Regulations arising out of any transactions in securities effected by the licensee, or any associated person or other affiliate of the licensee, on the basis of material nonpublic information, as if the licensee itself had committed such violation.

41. Acceptance of Gifts and Other Inducements

(1) No licensee shall pay or cause to be paid, or permit any associated person or affiliate thereof to pay or cause to be paid to any other person, any money, service, financial benefit, perquisite, valuable consideration or other item of value, as an inducement to refer business to the licensee or any associated person or affiliate thereof, unless such arrangement is

(i) in writing,

(ii) maintained as an official record of the licensee, and
(iii) fully disclosed to customers of the licensee.

(2) No associated person or affiliate of a licensee shall, directly or indirectly, accept any money, service, financial benefit, valuable consideration or other item of value from any person which is paid or given with the purpose or effect of influencing the performance by such person of his official business duties; provided, however, that this subsection shall not prohibit the receipt by an associated person of commission, business, emoluments and other usual and customary compensation paid by the licensee.

(3) The Bank, by order, notice or directive, may, subject to such condition as it deems appropriate, exempt any transaction or class of transactions from the prohibitions of this Regulation if it finds that such transaction or class of transaction does not pose a significant risk of corruptly influencing the performance by any person of his business responsibilities or duties, is not likely to lead to a violation of the Act or these Regulations, and otherwise is consistent with the purposes of the Act and these Regulations.

42. Disclosure of Material Interests

(1) Every licensee, prior to effecting a transaction with or for, or recommending a transaction to, a customer, disclose to that customer any material interest which the licensee, or person associated with the licensee, has in such transaction, including any beneficial ownership or other interest in any security which is the subject of the transaction.

(2) The Bank may, by notice to licensees, prescribe further requirements and conditions under this Regulation.

(3) The Bank, by order, notice or directive, may, subject to such condition as it deems appropriate, exempt any transaction or class of transactions from the prohibitions of this Regulation if it finds

that such transaction or class of transaction does not pose a significant risk of corruptly influencing the performance by any person of his business responsibilities or duties, is not likely to lead to a violation of the Act or these Regulations, and otherwise is consistent with the purposes of the Act and these Regulations.

43.Actions by Bank

(1)Where, in the opinion of the Bank, any person holding a licence under these Regulations, or any associated person of such a licensee (hereinafter the "subject person"), in conducting the business of the licensee, is committing or pursuing or is about to commit or pursue any act or course of conduct that is a violation of the Act, or the requirements or restrictions of any Regulation, directive, notice, licence, or condition imposed in writing of or issued by the Bank, the Bank may direct the subject person to do any or all of the following:

(a)cease or refrain from doing the act or pursuing the course of conduct; or perform such acts as, in the opinion of the Bank, are necessary to rectify the situation. In particular, but without limiting the generality of the foregoing, the Bank may:-

(i)require the subject person to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(ii)impose any limitation on the subject person's purchase or sale of securities or acceptance of customer funds or assets;

(iii)prohibit the subject person from soliciting transactions in securities by customers either generally or by persons who are not already customers;

(iv)prohibit the subject person from entering into any other transaction or class of transaction;

(v)require the revision of any contract to which the subject person is a party, or order the subject person to make restitution or recompense to any person aggrieved by its actions; or

(vi)require the suspension or removal from office of any director, officer, official or other subject person.

(2)Where any person licensed under these Regulations fails to satisfy the requirements of Regulation 11 or 12 pertaining to required capital and liquidity, the requirements of Regulation 14 pertaining to safeguarding of customer funds or securities, or the requirements of Regulation 17 pertaining to books, records and accounts, the Bank may, by written order or directive to the licensee, require such licensee to take one or more of the following measures:

(a)submit a plan to the Bank specifying the measures the licensee shall take to restore its capital or reserves and the time frame for implementation of the plan;

(b)increase the licensee's capital or reserves;

(c)impose requirements and conditions for the protection of customer funds and securities;

(d)specify books, records and accounts to be kept by the licensee;

(e)suspend the licensee's payment of dividends; or

(f)restrict the activities of the licensee.

(3) Any order or directive given under subsection (1) or (2) shall be given by notice in writing to the subject person. Such order or directive may be varied by further written order or directive; and any order or directive may be revoked by the Bank by notice in writing to the subject person.

(4) Prior to the issuance of any order or directive under subsection (1) or (2), the Bank shall cause to be served on or delivered to the licensee or subject person a notice containing a statement of the actual or proposed action or course of conduct constituting the reported violation, and specifying a time and place (not less than thirty (30) days after the service or delivery of the notice) at which a hearing will be held to determine whether an order or directive should issue. At the hearing, the Bank shall hear the oral or written views of the subject person, and consider such evidence and information deemed material and relevant. The Bank then shall determine whether the alleged facts have been satisfactorily established, and whether such facts satisfactorily establish an actual or potential action or course of conduct constituting a violation, and upon an affirmative determination, shall issue an order or directive under this regulation. A copy of such order or directive shall promptly be served on the subject person.

(5) If the Bank determines that (i) a licensee has or is engaged in a violation of the Act and the rules adopted under the Act, and (ii) the acts or course of conduct in question may pose a serious risk to the financial condition of a licensee, cause a significant financial loss to any person or personal gain to the person which is the subject of the order or directive, or otherwise seriously prejudice the interests of a licensee's customers, the Bank may issue a summary order or directive which shall take effect promptly on delivery to the subject person affected; the subject person shall be afforded the opportunity to present his views to the Bank within ten (10) days after the delivery of the order or directive on whether the order or directive in question should be removed or varied.

(6) Within ten days of the issuance of an order or directive under this regulation, the person who is the subject of the order, or directive may appeal such order or directive to the Court, but such appeal shall not stay the effectiveness of the order or directive issued under this regulation. The Court shall affirm the Bank's order, directive or penalty if it finds that such action is supported by substantial evidence.

(7) In addition to any other penalties or remedies imposed by the Bank under this regulation, any person who fails to comply with any order or directive made by the Bank under this regulation, and of which that person has received notice in writing, or fails to pay any penalty as provided in subsection (6), shall be guilty of an offense and shall be liable to the penalties and actions provided in section 46 of the Act.

(8) The Bank may, either of its own motion or on the application of a licensee or subject person with respect to which an action has been taken under this Regulation, rescind or vary the prohibition or requirement if it appears to the Bank that it is no longer necessary for the prohibition or requirement to take effect or continue in force as the case may be, or that it should take effect or continue in force in a different form.

(9) The power to impose, rescind or vary a sanction under this Regulation shall be exercisable by written notice served by the Bank on the licensee or subject person concerned, and any such notice shall take effect on such date as is specified in it.

(10) If the Bank refuses to rescind or vary a sanction on the application of the licensee or subject person to whom it applies, it shall serve notice on that person to that effect.

(11) A notice imposing or varying a sanction otherwise than on the application of the licensee or subject person to whom it applies, and any notice under subsection (2), shall state the reasons for which the sanction has been imposed or varied or, as the case may require, why the application for variation or rescission was refused.

(12)The Bank may give notice of any sanction imposed by it under this Act and of any rescission or variation thereof, and any such notice may, if the Bank considers necessary, include a statement of the reasons for the variation or rescission.

PART H: CLEARANCE AND SETTLEMENT; CUSTODY

44. Clearing Agreements and Settlement

(1)All clearing or carrying agreements entered into by a licensee shall specify the respective functions and responsibilities of each party to the agreement and shall, at a minimum, specify the responsibility of each party with respect to each of the following matters;

- (a)opening, approving and monitoring customer accounts;
- (b)extensions of credit;
- (c)maintenance of books and records;
- (d)receipt and delivery of funds and securities;
- (e)safeguarding of funds and securities;
- (f)confirmation and statements;
- (g)acceptance of orders and execution of transactions;
- (h)the requirement to provide customer notification under subsection (3) of this Regulation.

(2) Whenever a clearing licensee amends any of its clearing or carrying agreements with respect to any item enumerated in subparagraphs (1) (a) through (1) (h) or enters into a new clearing or carrying agreement with an introducing licensee, the clearing licensee shall submit the agreement to any self-regulatory authority of which it is a member for review and approval.

(3)Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of his account of the existence of the clearing or carrying agreement.

45. Standards for Clearance and Settlement of Transactions

(1)Every licensed broker and dealer shall adopt and enforce written policies and procedures governing the method by which securities transactions effected by the broker or dealer are cleared and settled, or are caused to be cleared and settled with another party engaged in the business of clearance and/or settlement of securities transactions.

(2)In the case of any licensee which is a member of the Exchange, the licensee shall abide by rules and regulations adopted by the Exchange relating to the reporting, clearance and settlement of transactions and securities listed or traded on the Exchange.

(3)Every licensed broker or dealer clearing and settling securities transactions through another party shall do so pursuant to the terms of a contract which specifies, at a minimum -

(a) specific time and performance standards relating to the clearance and settlement of securities transactions by the second party;

(b) performance and operational specifications relating to the clearance and settlement of such securities transactions;

(c) specific remedial measures in the event of any failure by the person performing clearance and /or settlement services in accordance with the standards and specifications of the contract;

(d) full particulars with respect to any bank or financial institution custodial relationship established or used by the person performing clearance and/or settlement services; policies and procedures governing the safekeeping of funds and securities through the person performing clearance and/or settlement services; requirements, accounting and reporting periodic like, the payments, interest dividend items, transfer concerning inquiries of handling governing (f) procedures

(4) Prior to retaining any person for the performance of clearance and/or settlement services, every licensed broker or dealer shall conduct appropriate inquiries to ascertain that the person to be selected to perform such services has the requisite financial, operational and managerial capabilities to promptly and efficiently perform such clearance and/or settlement services.

(5) Every licensee shall promptly report to the Bank and the Exchange the name and address of every person performing such clearance and/or settlement services, and a copy of the agreement or agreements pursuant to which such services are to be performed.

46. Use of Approved Custodians

(1) Every licensee shall adopt and enforce written policies and procedures which are designed to ensure that any custodians used by the licensee for the custody and safekeeping of funds, securities or other assets of the licensee or its customers satisfy basic minimum standards of financial soundness and operational performance with respect to the safekeeping and segregation of funds, securities and other assets, the recording of legal and beneficial ownership of securities, inventories and reconciliations and counts of funds, securities and other assets, reporting of holdings and transactions to the licensee, reviews and audits of books, records and accounts, and similar matters.

(2) For purpose of this Regulation, a bank or financial institution licensed or authorized to do business in Malawi under the Banking Act and subject to supervision by the Bank shall be presumed to satisfy minimum standards of financial soundness and operational performance.

PART I: MISCELLANEOUS

47. Bank's Powers to Further Define; concerning external licensees

(1) The Bank, by written order, notice, or direction, may further define, clarify or specify the terms and requirements of these Regulations in order to further the objectives and purposes of the Act.

(2) Upon application by an external licensee, or upon its own motion, the Bank may prescribe general or special requirements applicable to the activities of external licensees authorized to do business in Malawi, and variations from the applicability of these Regulations, taking into account the nature and character of the regulation of such licensees by external governmental or self regulatory authorities, the nature and location of the assets and liabilities of such licensees, and other matters relevant to the purposes of this Act and the protection of investors. Provided,

however, that any requirements prescribed under this Section shall not unfairly discriminate in favour of or against external licensee or class of external licensees by comparison to licensees organized under the laws of Malawi.

48. Consequences of Violation

(1) Any violation of these Regulations shall constitute a violation of the Act, and shall be subject to the remedies and penalties specified therein with respect to such violations.

(2) Without limiting the authority of the Bank to take any other action, any violation of these Regulations specifically shall constitute a violation of section 42 of the Act and shall be subject to the penalties prescribed in section 46 thereof.

49. Other Remedies

Nothing in this regulation shall derogate from any other right or remedy which may be available to the Bank or any other person under any law in force in Malawi.