

## Unofficial and not binding translation

**STATE ORDINANCE containing rules concerning the supervision of securities business and, in this context, amending the sectoral supervisory legislation and the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing (“AB” [Official Gazette of Aruba] 2011 No. 28) (State Ordinance on the Supervision of Securities Business)**

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IN THE NAME OF THE KING!

THE GOVERNOR of Aruba,

Having considered:

- that, with a view to an adequate functioning and the integrity of the financial markets and the position of the investors in these markets, it is desirable to lay down rules for securities transactions and the securities markets and the parties active in these markets;
- that, in this context, it is also desirable to introduce some amendments to the sectoral supervisory legislation and to the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 No. 28);

having heard the Advisory Council and consulting with Parliament, has laid down the following State Ordinance:

### Chapter 1

#### General provisions

#### Article 1

In this State Ordinance and the provisions based on it, the following terms shall mean:

- |                         |   |   |
|-------------------------|---|---|
| administrator           | : | the party whose aim is to perform administrative services;  |
| administrative services | : | the provision of services, whether or not for a consideration, for the benefit of investment institutions, in any case including: <ol style="list-style-type: none"><li>1. the conduct of the management of investment institutions, in any</li></ol> |

		case including the assignment of natural persons or legal entities as directors, representatives or other executive officers of an investment institution, who shall <i>inter alia</i> be charged with making decisions;
		2. the administration, in any case including keeping the accounts, as well as obtaining, recording, processing and providing information for the benefit of the management or performance of an investment institution;
		3. the provision of a domicile and office facilities for the benefit of investment institutions;
Bank	:	the Central Bank of Aruba;
manager	:	the party that conducts the management of an investment institution;
investment fund	:	assets not transferred to a legal entity containing requested or obtained funds or other goods for collective investment in order to share the proceeds of the investment among the participants;
investment institution	:	investment fund or investment company;
investment company	:	legal entity that asks or obtained funds or other goods for collective investment, in order to arrange for the participants to share in the proceeds of the investments;
listed company	:	a corporation or a limited liability company under the laws of Aruba, of which the shares or depositary receipts issued for shares have been admitted to be traded on a stock exchange, with a license as referred to in Article 9, third paragraph, or with a license or recognition of another supervisory authority;
custodian	:	the party charged with keeping the assets of an investment institution in its custody;
branch office	:	one or more sections without legal personality of an enterprise or institution;
client	:	a person, not being a professional

		market participant, to whom a securities broker, investment institution, asset manager or holder of a stock exchange offers or provides a service or intends to offer or provide a service;
participant	:	the shareholder in an investment company or the party entitled to a share in the profits of an investment fund;
securities	:	<ol style="list-style-type: none"> <li>1. share certificates, debt instruments, profit-sharing and founder's certificates, stock options, warrants and similar valuable papers;</li> <li>2. participation rights, options, rights to future transfer of objects, entries in share and debt registers and similar rights, whether or not conditional;</li> <li>3. rights arising from agreements to set off exchange or price differences and similar negotiable rights and securities;</li> <li>4. certificates and scrips representing securities as referred to above, except for securities that only have the nature of a payment instrument, condominiums and those representing rights to a timeshare;</li> </ol>
securities broker	:	the party that carries out activities as an intermediary as a profession or trade, aimed at the conclusion of transactions in securities for the account of a client;
stock exchange	:	a market subject to statutory regulations for bringing together the supply of and demand for securities;
external auditor	:	a person who is not employed by the enterprise or institution, being a registered accountant or an accounting consultant, as regards whom a note has been made as referred to in Article 36, second paragraph, subparagraph i, of the Dutch Accountancy Profession Act ('Stb.' [ <i>Bulletin of Acts and Decrees</i> ] 2012, 680);
controlled enterprise	:	enterprise or institution over which a person can exercise dominant control;
qualified holding	:	a direct or indirect interest of ten percent or more of the issued share

		capital of an enterprise or institution, or the ability to exercise directly or indirectly ten percent or more of the voting rights in an enterprise or institution, or the ability to exercise directly or indirectly similar control, while, when determining the number of voting rights someone has in an enterprise or institution, his voting rights shall also include the votes of which he disposes or is deemed to dispose pursuant to Article 84;
court	:	Court of First Instance of Aruba;
group	:	economic entity of an organized group of legal entities, corporations or natural persons;
capital interest	:	shares, depositary receipts for shares and negotiable instruments for the acquisition of shares and depositary receipts for shares;
credit institution	:	a credit institution as referred to in Article 1 of the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16);
Minister	:	the Minister of Finance;
pension fund	:	a company pension fund as referred to in Article 1 of the State Ordinance on Company Pension Funds (AB 1998 No. GT 17);
professional market participant	:	investment institution, credit institution, pension fund, securities broker, asset manager, insurer, listed company, enterprise with a balance sheet total of Afl. 10,000,000.- or more, or another party designated by the Bank;
register	:	the register referred to in Article 14, first paragraph;
representative organization	:	an organization that has been designated as a representative organization by state decree, having heard the Bank, with respect to the implementation of this State Ordinance, for a group of enterprises or institutions mentioned in that state decree;
voting rights	:	votes that can be cast on shares, including rights pursuant to an agreement to obtain votes;
terrorist financing	:	the crime referred to in Article 2:55 of

		the Criminal Code of Aruba (AB 2012 No. 24);
sub-fund	:	an administratively separated part of the assets of an investment institution for which a separate investment policy is pursued, and in which funds or other goods specifically asked or obtained for that part have been or are included for collective investment, in order to arrange for the participants to share in the proceeds of the investments subject to conditions specifically applicable to that part;
supervisory authority	:	a body that has been charged in any country by or pursuant to a law or any equivalent generally binding regulation with the supervision of financial markets or of persons active in these markets, or the supervision of the compliance with legislation and regulations concerning the prevention and combating of money laundering and terrorist financing;
issuing institution	:	the party who issued or intends to issue securities;
asset manager	:	the party who manages securities belonging to a client or funds belonging to a client in order to be invested in securities, including the conclusion or arranging for third parties to conclude securities transactions, as a profession or trade, based on an agreement, other than as manager of an investment institution, on a discretionary basis and for the account of the client with whom the agreement has been concluded;
insurer	:	an insurer as referred to in Article 1 of the State Ordinance on the Supervision of the Insurance Industry (AB 2000 No. 82);
inside information	:	knowledge of information that is concrete and is directly or indirectly related to an issuing institution of which the securities are listed on a stock exchange, for which a license as referred to in Article 9, third paragraph, has been granted to the holder, or to a stock exchange admitted by the public authorities,

domiciled abroad, or to the trade in such securities:

- a. which information has not been disclosed;
- b. the disclosure of which information could have a significant impact on the price of the securities or on the price of derivative securities;

money laundering : a crime as referred to in Articles 2:404, 2:405 and 2:406 of the Criminal Code of Aruba;

domicile : place where an enterprise or institution is domiciled according to its articles of incorporation or bylaws, or, if it is not a legal entity, the place where the enterprise or institution has its principal establishment.

## Article 2

Except for Chapter 4, paragraph 9, and Chapters 5 through 9, this State Ordinance shall not apply to:

- a. investment institutions that only offer participation rights to professional market participants;
- b. managers and custodians, insofar as they manage investment institutions as referred to in subparagraph a or are charged with keeping the assets of these investment institutions in their custody.

## Article 2a

The provisions laid down by or pursuant to this State Ordinance shall not apply to Land Aruba, unless otherwise provided in same.

## Article 3

The Bank shall decide on the admission to the market of and exercise supervision of securities brokers, asset managers, investment institutions, managers, custodians and stock exchanges.

## Article 4

1. By or pursuant to state decree containing general administrative orders, having heard the Bank, an exemption may be granted from the rules laid down by or pursuant to this State Ordinance, if necessary, subject to restrictions or conditions, provided the interests this State Ordinance seeks to protect do not dictate otherwise.
2. On application, the Bank may grant a full or partial exemption from rules laid down by or pursuant to this State Ordinance, whether or

not for a definite period, if the applicant proves to the satisfaction of the Bank that the interests this State Ordinance seeks to protect are not compromised by this, and the objectives aforementioned rules seek to achieve can be achieved otherwise.

3. The Business Establishment Ordinance (AB 1990 No. GT 55) shall not apply to a securities broker, asset manager, investment institution, manager, custodian or holder of a stock exchange.

#### Article 5

1. A license or exemption pursuant to this State Ordinance shall be applied for at the Bank.
2. The applicant shall provide the information and documents prescribed by or pursuant to this State Ordinance and, at the request of the Bank, the further data and documents related to the application or the nature of the business to be conducted by the applicant.
3. The Bank shall decide within thirteen weeks after the date of receipt of a complete application on that application. If the Bank has requested further data, this period shall take effect as of the date of receipt of these further data.
4. Exceeding the period referred to in the third paragraph shall be considered equivalent to a rejection of the application.
5. The Bank may place restrictions on and attach conditions to licenses or exemptions referred to in this State Ordinance with a view to the interests this State Ordinance seeks to protect.
6. Licenses and exemptions granted pursuant to this State Ordinance shall be personal and non-transferable and shall not pass by operation of law.

#### Article 6

1. The Bank may change, withdraw in whole or in part or place further restrictions on or attach further conditions to a license or exemption granted pursuant to this State Ordinance, if:
  - a. the holder of the license or exemption has filed an application to this effect;
  - b. the holder of the license or exemption, as it turns out, provided incorrect or incomplete information in the application, and having knowledge of the correct and complete information would have resulted in a different decision;
  - c. the holder of the license or exemption concealed circumstances or facts based on which the license or exemption would have been refused, if they had occurred or had been known before the date on which it was granted;
  - d. the holder of the license or exemption no longer complies with the rules laid down by or pursuant to this State Ordinance or no longer complies with the restrictions or regulations attached to the license or exemption;

- e. the holder of the license or exemption did not make use thereof within a period of six months after having been granted;
  - f. the holder of the license or exemption no longer makes use thereof;
  - g. the holder of the license or exemption transfers all or part of the enterprise or institution for the benefit of which the license or exemption was granted;
  - h. the holder of the license or exemption dies, if it concerns a natural person, or is dissolved, if it concerns a legal entity;
  - i. the opinion on the truth and fairness of financial statements submitted to the Bank does not show that the financial statements give a true and fair view of the amount and composition of the assets of the enterprise or institution and of the results in respect of the financial year in question;
  - j. the holder of the license or exemption has gone bankrupt;
  - k. the holder of a license or exemption does not comply with an instruction as referred to in Article 95;
  - l. in the opinion of the Bank, the provisions laid down by or pursuant to the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 No. 28) or the Sanctions Ordinance 2006 (AB 2007 No. 24) are not or not sufficiently complied with.
2. The Bank may place restrictions on or attach conditions to a license or exemption granted by it pursuant to this State Ordinance, if so required by facts, circumstances or developments that affect or could affect the holder of the license or exemption, in the opinion of the Bank, with a view to the interests this State Ordinance seeks to protect.

#### Article 7

1. If the Bank revokes a license, it may stipulate in its decision to revoke that the enterprise or institution concerned shall fully or partially liquidate its business within a period to be determined by the Bank, with due observance of instructions given by the Bank.
2. During the liquidation of its business, the enterprise or institution of which the license has been revoked shall be considered a licensed enterprise or institution.

#### Article 8

1. The directives to be given by the Bank pursuant to this State Ordinance may also relate to the implementation of the provisions laid down in other state ordinances.
2. The directives referred to in the first paragraph shall only be given or changed after consulting with the representative organization involved.
3. The directives referred to in the first paragraph shall be announced in a manner to be determined by the Bank.



4. The enterprises or institutions to which and the persons to whom the directives as referred to in the first paragraph have been given shall comply with these directives.

## CHAPTER 2

### Market access

#### § 1. Licensing requirement

##### Article 9

1. It is prohibited to act as a securities broker or asset manager in or from Aruba without a license granted by the Bank for that purpose.
2. It is prohibited to ask for or to obtain funds or other goods for participation in an investment institution or to offer participation rights in an investment institution in or from Aruba, if that investment institution or, if it concerns an investment fund, the manager of that investment fund is not in possession of a license granted by the Bank.
3. It is prohibited to have a stock exchange in Aruba without a license granted by the Bank for that purpose.

##### Article 10

1. Article 9, first paragraph, shall not apply to a credit institution or insurer that disposes of a license as referred to in Article 4 of the State Ordinance on the Supervision of the Credit System and Article 5 of the State Ordinance on the Supervision of the Insurance Industry, respectively, insofar as acting as a securities broker or asset manager is not prohibited or restricted under that license.
2. A credit institution or insurer as referred to in the first paragraph shall report the intention to act as a securities broker or asset manager to the Bank before carrying out this intention.
3. Articles 16, 17, 20 through 22, 61 through 65, and 70 through 74 shall not apply to an enterprise or institution as referred to in the first paragraph.

#### § 2. License application

##### Article 11

1. The application for the issue of a license as referred to in Article 9 shall at least contain the following information:
  - a. a statement of the name, the address and the legal form of the applicant, and, if the applicant is a legal entity, a statement of the registered office, the name given in the articles of incorporation and the trade name or trade names;

- b. the deed of incorporation, articles of incorporation and bylaws of the applicant.
  - c. if the applicant is listed in the trade register, a statement of the registration number;
  - d. the number and the identity of the directors, the members of the board of supervisory directors or of the body that has a task similar to that of the board of supervisory directors, and other persons who determine or co-determine the policy of the applicant;
  - e. information based on which the Bank can assess whether the directors, the members of the board of supervisory directors or of the body that has a task similar to that of the board of supervisory directors, and other persons who determine or co-determine the policy of the applicant, both individually and collectively, are suitable in connection with the conduct of the business of the applicant and the performance of their duties;
  - f. the antecedents and a certificate of good conduct and other information to be determined by the Bank, based on which the Bank can ascertain the integrity of the directors, the members of the board of supervisory directors or of the body that has a task similar to that of the board of supervisory directors, and other persons who determine or co-determine the policy of the applicant is beyond doubt;
  - g. the identity of the persons holding the positions as referred to in Article 47, first and second paragraph, of the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing;
  - h. the identity, antecedents and a certificate of good conduct, and other information to be determined by the Bank, based on which the Bank can assess whether the reliability of the holders of a qualified holding in the applicant, and, if the holder of a qualified holding is a legal entity, the persons who determine the day-to-day policy of this legal entity is beyond doubt, as well as the size of that qualified holding and documents showing the financial position and legal group structure of the holder of a qualified holding;
  - i. financial statements or an opening balance sheet, which shall be accompanied by an opinion on the truth and fairness of the data contained therein, signed by an external auditor;
  - j. a program of activities the applicant intends to perform;
  - k. the proposed policy and written procedures and measures for sound and controlled business operations;
  - l. a description of the formal and actual control structure and, if the applicant forms part of a group, a list of names of those who determine or co-determine the policy of the group;
  - m. if the applicant intends to outsource work to a third party on a structural basis, the agreement providing for this outsourcing;
  - n. if necessary, other data determined by the Bank.
2. Insofar as the applicant is a securities broker or an asset manager, the application shall also contain the following information:

- a. information based on which the Bank can assess whether Article 23 will be complied with;
  - b. information based on which the Bank can assess whether Article 24 will be complied with;
  - c. if applicable, a description of the measures concerning the holding of funds and securities belonging to clients;
  - d. a description of the proposed policy on the prevention of conflicts of interest between itself and its clients.
3. Insofar as the applicant is an investment institution or, if it concerns an investment fund, a manager of an investment fund, the application shall also contain the following information:
    - a. information based on which the Bank can assess whether Article 23 will be complied with;
    - b. if applicable, the articles of incorporation of the manager;
    - c. if applicable, the articles of incorporation of the custodian;
    - d. if applicable, a description of the measures taken by the manager to protect the rights of participants concerning the holding of funds and securities belonging to clients;
    - e. if applicable, the agreement referred to in Article 43;
    - f. the prospectus referred to in Article 49.
  4. Insofar as the applicant is a holder of a stock exchange, the application shall also contain the following information:
    - a. information based on which the Bank can assess whether Article 25 will be complied with;
    - b. a description of the rules and procedures referred to in Article 59.

## Article 12

The Bank shall grant a license as referred to in Article 9, provided it is satisfied that the following will be complied with, insofar as applicable to the applicant:

- a. the provisions of Article 17 concerning the minimum number of persons determining the day-to-day policy and the place from where they carry out their work;
- b. the provisions of Article 18 concerning the minimum number of members of the board of supervisory directors or other body responsible for supervising the policy and the day-to-day affairs within the enterprise or institution;
- c. the provisions of Article 19 concerning the suitability of the persons referred to in that Article;
- d. the provisions of Article 20 concerning the reliability of the persons referred to in that Article;
- e. the provisions of Article 63 concerning the reliability of the holders of a qualified holding in the applicant, and that, as a result of a qualified holding in the applicant, there is no other influence on the applicant, which is contrary to a sound policy for the applicant, nor a circumstance that could lead to this;
- f. the opinion as referred to in Article 11, first paragraph, subparagraph i, stating that the financial statements or opening

- balance sheet give a true and fair view of the amount and composition of the assets of the applicant;
- g. having regard to the information as referred to in Article 11, first paragraph, subparagraphs i through m, and second through fourth paragraph, the applicant is able to carry out its intentions and to comply with the applicable provisions laid down by or pursuant to this State Ordinance, the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing and the Sanctions Ordinance 2006;
  - h. the granting of the license, in the opinion of the Bank, will not or could not lead to an undesirable development of the securities sector.
- § 3. Performance of services by securities brokers, asset managers and investment institutions domiciled outside Aruba

### Article 13

1. The Bank may grant securities brokers, asset managers and investment institutions domiciled outside Aruba an exemption from Article 9, if:
  - a. the applicant is domiciled in a country to be designated by a regulation from the Minister, where the conduct of the business of securities broker, asset manager or investment institution is supervised in such a way that sufficient safeguards are offered with regard to the interests this State Ordinance seeks to protect;
  - b. the applicant submits a supervision statement, issued by the supervisory authority of the country referred to in subparagraph a, and
  - c. in the opinion of the Bank, this is not contrary to the interests this State Ordinance seeks to protect.
2. Articles 16, 17, 18, 20, second paragraph, 22, 40, 41, 42, 43, 44, 49, second and third paragraph, 54, 61, 62, 63, 64, 69, 70, 71, 72, 73 and 74 shall not apply to enterprises or institutions to which an exemption pursuant to the first paragraph has been granted.
3. An exemption as referred to in the first paragraph shall not be granted, if it concerns the provision of services on which restrictions have been placed in the country concerned or by the supervisory authority concerned with regard to the persons to whom services may be provided.

## CHAPTER 3

### The register

#### Article 14

1. There shall be a register for securities brokers, asset managers, investment institutions, managers and holders of stock exchanges

disposing of a license as referred to in Article 9, for credit institutions and insurers who have registered with the Bank pursuant to Article 9, second paragraph, and for enterprises disposing of an exemption as referred to in Article 13, first paragraph, which register shall be kept by the Bank. The register shall be public.

2. The Bank shall be responsible for the registration of:
  - a. security brokers, asset managers, investment institutions, managers and holders of a stock exchange, which obtained a license as referred to in Article 9, credit institutions and insurers that registered with the Bank pursuant to Article 9, second paragraph, and enterprises or institutions disposing of an exemption as referred to in Article 13, first paragraph;
  - b. the information to be reported pursuant to Chapter 6, paragraph 2;
  - c. prospectuses approved pursuant to Article 75.
3. The Bank shall be responsible for the removal from the register of each securities broker, asset manager, investment institution, manager or holder of a stock exchange of which the license as referred to in Article 9 has been revoked.
4. The register shall be organized in a manner to be determined by the Bank and shall be available for inspection by any party free of charge at the offices of the Bank.

#### Article 15

1. The Bank shall take care of announcing the registration in or removal from the register as referred to in Article 14, second paragraph, subparagraph a, and Article 14, third paragraph, within two weeks after the date on which it took place, in the Official Gazette of Aruba and in two local newspapers.
2. Each year in the month of January, the Bank shall take care of publishing a copy of the register as referred to in Article 14, first paragraph, insofar as the information as referred to in Article 14, second paragraph, subparagraph a, and Article 14, third paragraph, is concerned, based on the situation as of December 31 of the previous year, in the Official Gazette of Aruba and in two local newspapers.

#### CHAPTER 4

Provisions concerning the conduct of the business of securities brokers, assets managers, investment institutions and holding a stock exchange

##### § 1. Legal form

#### Article 16

1. A holder of a stock exchange shall have the legal form of a corporation (“N.V.”).

2. Only a legal entity with full legal capacity may act as a manager of an investment institution.
3. By or pursuant to state decree containing general administrative orders, rules may be laid down concerning the legal form of securities brokers, asset managers, investment companies and managers of investment funds.

## § 2. Management, organization and control structure

### Article 17

1. At least one natural person shall determine the day-to-day policy of a securities broker or asset manager.
2. At least two natural persons shall determine the day-to-day policy of an investment institution or a holder of a stock exchange.
3. At least one person who determines the day-to-day policy of a securities broker, asset manager or a holder of a stock exchange shall perform the work related thereto from Aruba.
4. By or pursuant to state decree containing general administrative orders, it may be determined that one or more persons who determine the day-to-day policy of an investment institution shall perform the work related thereto from Aruba.
5. On application, the Bank may grant full or partial exemption from the first through fourth paragraph, whether or not for a definite period, if the applicant proves to the satisfaction of the Bank that they cannot reasonably be complied with, and that the objectives this Article seeks to achieve are also achieved otherwise.

### Article 18

1. A holder of a stock exchange shall have a board of supervisory directors or other body responsible for supervising the policy and the day-to-day affairs within the enterprise or institution, which shall consist of at least three natural persons.
2. The Bank may give securities brokers, asset managers, managers of an investment fund or investment companies directives with regard to the number of natural persons charged with supervising the policy and the day-to-day affairs within the enterprise or institution.
3. On application, the Bank may grant full or partial exemption from the first and second paragraph, whether or not for a definite period, if the applicant proves to the satisfaction of the Bank that they cannot reasonably be complied with, and that the objectives this Article seeks to achieve are also achieved otherwise.

### Article 19

1. The policy of a securities broker, asset manager, investment institution or a holder of a stock exchange shall be determined or co-determined by persons who, in the opinion of the Bank, are both

individually and collectively suitable for the conduct of the business of the enterprise or institution and the performance of their duties. If, within the enterprise or institution, a body is responsible for supervising the policy and the day-to-day affairs within the enterprise or institution, this supervision shall be exercised by persons who, both individually and collectively, are suitable for exercising this supervision.

2. The Bank may give securities brokers, asset managers, investment institutions or holders of stock exchange directives with regard to the manner in which it is determined whether a person as referred to in the first paragraph is suitable, and which facts and circumstances shall be taken into account.

#### Article 20

1. The policy of a securities broker, asset manager, investment institution or a holder of a stock exchange shall be determined or co-determined by persons whose integrity is beyond doubt in the opinion of the Bank. If, within the enterprise or institution, a body is responsible for supervising the policy and the day-to-day affairs within the enterprise or institution, this supervision shall be exercised by persons whose reliability is beyond doubt in the opinion of the Bank.
2. The integrity of a person shall be beyond doubt, if the integrity has been established once by the Bank for the purposes of this State Ordinance, as long as no change in the relevant facts or circumstances becomes known, which gives a reasonable cause for a reassessment.
3. The Bank may give directives with regard to the manner in which it is determined whether the integrity of a person as referred to in the first paragraph is beyond doubt, and which facts and circumstances shall be taken into account.

#### Article 21

1. A securities broker, asset manager, investment institution or a holder of a stock exchange shall pursue an adequate sound corporate governance policy, and it shall organize its corporate governance structure in such a way that sound corporate governance is guaranteed.
2. The policy and structure as referred to in the first paragraph shall in any case deal with:
  - a. the recording and performance of the duties, responsibilities and working method of the management and the board of supervisory directors or other body responsible for supervising the policy and the day-to-day affairs;
  - b. the suitability, both individually and collectively, of the directors and supervisory directors or other body responsible for supervising the policy and the day-to-day affairs;

- c. the adoption and implementation of a clear strategy and objectives;
  - d. the adoption, implementation, monitoring and, where necessary, adjustment of the overall risk policy;
  - e. the systematic monitoring of the management of the risks associated with the operating activities;
  - f. the adequate provision of information to the management and the board of supervisory directors or other body responsible for supervising the policy and the day-to-day affairs;
  - g. a careful and sound decision-making;
  - h. the remuneration of the directors and supervisory directors or other body responsible for supervising the policy and the day-to-day affairs;
  - i. the independence of the supervisory directors or members of any body responsible for supervising the policy and the day-to-day affairs;
  - j. the role and responsibilities of the shareholders of the company.
3. The Bank may give securities brokers, asset managers, investment institutions or holders of stock exchange directives with regard to the policy and structure as referred to in the first paragraph.

#### Article 22

A securities broker, asset manager, investment institution or holder of a stock exchange may not be affiliated to persons or legal entities in a formal or actual control structure:

- a. that is non-transparent to such an extent that it constitutes or may constitute an obstacle to the adequate exercise of supervision of that enterprise or institution;
- b. if these persons or legal entities are subject to foreign law, and that foreign law constitutes or may constitute an obstacle to the adequate exercise of supervision of that enterprise or institution.

#### § 3. Financial guarantees

#### Article 23

1. A securities broker, asset manager and investment institution, as well as the custodian affiliated to an investment institution shall have of a minimum amount of equity to its disposal.
2. The Bank may give the enterprises or institutions as referred to in the first paragraph directives with regard to the size and composition of the minimum amount in respect of equity as referred to in the first paragraph.

#### Article 24

1. A securities broker and asset manager shall dispose of minimum solvency.



2. The Bank may give securities brokers and asset managers directives with regard to the calculation of the minimum amount of the solvency to be maintained pursuant to the first paragraph, the composition of the solvency and the valuation of the assets that may be considered to form part of the solvency, and of the values used to cover the solvency.

#### Article 25

1. A holder of a stock exchange shall dispose of sufficient financial resources to promote an orderly functioning of the market, given the nature and extent of the transactions conducted in the market and the risks to which it is exposed.
2. The Bank may give a holder of a stock exchange directives with regard to the amount of the financial resources referred to in the first paragraph.

#### Article 26

If a securities broker, asset manager, investment institution or holder of a stock exchange anticipates or can reasonably anticipate that it no longer complies or no longer will comply with the requirements applicable to it pursuant to Articles 23 through 25, it shall immediately inform the Bank thereof in writing.

#### § 4. Sound and controlled business operations

#### Article 27

1. A securities broker, asset manager, investment institution or holder of a stock exchange shall pursue an adequate policy for a sound conduct of its business, and it shall organize its business operations in such a manner that the sound conduct of its business is guaranteed.
2. The policy and business operations as referred to in the first paragraph shall be based on a systematic analysis of integrity risks.
3. The policy and business operations as referred to in the first paragraph shall in any case be focused on:
  - a. guaranteeing an integrity-aware corporate culture;
  - b. preventing conflicts of interest;
  - c. combating money laundering and terrorist financing;
  - d. complying with the rules laid down by or pursuant to the State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing, the Sanctions Ordinance 2006 or any other statutory regulations concerning the prevention and combating of money laundering and terrorist financing;
  - e. preventing criminal offenses or other law violations by the enterprise or institution or its employees, which could prejudice

- the confidence in the enterprise or institution or in the financial markets;
- f. discouraging relationships with clients or other third parties, which could prejudice the confidence in the enterprise or institution or in the financial markets;
  - g. discouraging other actions by the enterprise or institution or its employees, which are contrary to generally accepted standards according to unwritten law to such an extent that the confidence in the enterprise or institution or in the financial markets can be prejudiced.
3. The Bank may give securities brokers, asset managers, investment institutions or holders of a stock exchange directives with regard to the sound conduct of the business.

#### Article 28

1. A securities broker, asset manager, investment institution or holder of a stock exchange shall pursue an adequate policy for a controlled conduct of its business, and it shall organize its business operations in such a manner that the controlled conduct of its business is guaranteed.
2. The policy and business operations as referred to in the first paragraph shall be based on a systematic analysis of risks run by the enterprise or institution, in any case including the general business risks and the financial risks.
3. The policy and business operations as referred to in the first paragraph shall in any case be focused on:
  - a. controlling business processes and business risks;
  - b. managing financial risks and other risks that could affect the financial situation of the enterprise or institution, as well as ensuring the preservation of the required financial safeguards;
  - c. orderly and transparent financial market processes and pure relations between professional market participants and the careful treatment of clients.
4. The Bank may give securities brokers, asset managers, investment institutions or holders of a stock exchange directives with regard to the controlled conduct of the business.

#### Article 29

1. If a securities broker, asset manager, investment institution or holder of a stock exchange outsources work to a third party, it shall ensure that this third party complies with the rules applicable to the work of the outsourcing enterprise or institution pursuant to this State Ordinance. The outsourcing enterprise or institution shall remain responsible for compliance with the applicable rules.
2. A securities broker, asset manager, investment institution or holder of a stock exchange shall record the agreement with the third party to which the work is outsourced on a structural basis in writing. The agreement shall at least provide for the following:

- a. the mutual exchange of information, including agreements on the provision of information requested by the Bank for the performance of its statutory duty;
  - b. the possibility for the outsourcing enterprise or institution to introduce changes to the manner in which the work is performed by the third party at all times;
  - c. the obligation for the third party to enable the outsourcing enterprise or institution to continue complying with the provisions laid down by or pursuant to this State Ordinance;
  - d. the possibility for the Bank to conduct or arrange for others to conduct an on-site examination at the third party;
  - e. the manner in which the agreement is terminated, and the manner in which it is guaranteed that the outsourcing enterprise or institution will be able to perform the work itself again or arrange for another third party to perform it after termination of the agreement.
3. A securities broker, asset manager, investment institution or holder of a stock exchange shall not outsource work to a third party of which it knows or should know that it is not allowed to perform aforementioned work.
  4. A securities broker, asset manager, investment institution or holder of a stock exchange shall not outsource work of persons that determine the day-to-day policy of the securities broker, asset manager, investment institution or holder of the stock exchange, which shall also include determining the policy and rendering account for the policy pursued.
  5. A securities broker, asset manager, investment institution or holder of a stock exchange shall not proceed to outsourcing work, if that outsourcing can constitute an obstacle to an adequate supervision of the compliance with the provisions laid down by or pursuant to this State Ordinance.
  6. The Bank may give securities brokers, asset managers, investment institutions or holders of a stock exchange directives with regard to the first through fourth paragraph. The Bank may also determine that certain work may not be outsourced.

#### Article 30

1. A securities broker, asset manager, investment institution or holder of a stock exchange shall dispose of written procedures for the careful and consistent handling of complaints within a reasonable time.
2. The Bank may give securities brokers, asset managers, investment institutions or holders of a stock exchange directives with regard to the first paragraph.

§ 5. Additional provisions concerning securities brokers and asset managers

#### Article 31

1. A securities broker or asset manager shall use its best endeavors in looking after the interests of its clients when providing services honestly, fairly and professionally and shall refrain from actions that are detrimental to the integrity of the market.
2. The Bank may give securities brokers or asset managers directives with regard to the first paragraph.

#### Article 32

1. A securities broker or asset manager that keeps securities or funds belonging to a client in safe custody shall take adequate measures to protect the rights of that client to these securities or funds and to avoid the use of these securities or funds by the securities broker or asset manager for its own account.
2. The Bank may give securities brokers or asset managers directives with regard to the first paragraph.

#### Article 33

1. A securities broker or asset manager shall pursue an adequate policy concerning the prevention and management of conflicts of interest between itself and its clients and among its clients.
2. The Bank may give securities brokers or asset managers directives with regard to the policy as referred to in the first paragraph.

#### Article 34

1. A securities broker or asset manager shall open a file for each client, containing documents describing the mutual rights and obligations of the securities broker or asset manager and the client.
2. A securities broker or asset manager shall conclude a written agreement with each client, which shall be included in the file as referred to in the first paragraph. This agreement shall constitute the sole basis for the services provided by the securities broker or asset manager to the client and shall in any case contain the mutual rights and obligations of the client and the securities broker or asset manager.
3. The Bank may give securities brokers or asset managers directives with regard to the content of the agreement as referred to in the second paragraph.
4. A securities broker or asset manager shall retain the agreements with clients, as well as information designated by the Bank for at least ten years.

#### Article 35

A securities broker or asset manager shall not perform transactions for the account of the client with such a frequency or of such an amount that, given the circumstances, they apparently only serve to benefit the

securities broker or asset manager or a party affiliated to the securities broker or asset manager.

#### Article 36

A securities broker or asset manager shall retain all relevant information concerning the transactions in securities performed by it for at least ten years.

#### Article 37

1. A securities broker or asset manager shall ensure that the information provided or made available by it or on behalf or for the benefit of clients in the form of advertising or otherwise concerning securities or its services shall be factually correct, clear and not misleading.
2. The Bank may give securities brokers or asset managers directives with regard to the minimum conditions to be fulfilled by the advertising and other information as referred to in the first paragraph.

#### Article 38

1. A securities broker or asset manager shall ensure that a client receives the information he reasonably requires to form an adequate opinion before assuming an obligation concerning securities in a timely fashion and free of charge.
2. The information referred to in the first paragraph shall in any case be related to the costs and risks associated with the services or the securities for the client.
3. A securities broker or asset manager that has concluded an agreement with a client shall timely provide that client with information about significant changes compared to information provided earlier, changes to the conditions under which the agreement has been concluded, as well as other information related to the securities or the service provision, during the term of the agreement, to the extent that this information is reasonably relevant to the client.
4. The Bank may give securities brokers or asset managers directives with regard to the information to be provided as referred to in the first and third paragraph.

#### Article 39

1. A securities broker or asset manager shall obtain information, in the interest of the client, about his financial position, knowledge, experience, objectives and risk appetite.
2. A securities broker or asset manager shall tailor its services to the client to the information obtained pursuant to first paragraph.

3. The Bank may give securities brokers or asset managers directives with regard to the information to be obtained as referred to in the first paragraph.
4. A securities broker or asset manager shall retain the information obtained pursuant to the first paragraph for at least ten years after the termination of the service to the client.

§ 6. Additional provisions concerning investment institutions

Article 40

1. An investment fund shall be managed by a manager.
2. If the investment institution is an investment fund, the obligations applicable to investment institutions pursuant to this State ordinance shall apply to the manager of that fund.

Article 41

If an investment company has a manager, that manager shall be the director under the articles of incorporation of the investment company. Article 16, second paragraph, shall be equally applicable.

Article 42

1. The manager of an investment fund shall take measures to ensure that:
  - a. the assets of the investment fund for the benefit of the participants are obtained by a custodian independent of the manager, and
  - b. the custodian can only dispose of the assets of the investment fund with the cooperation of the manager.
2. The Bank may give managers of an investment fund directives with regard to the measures as referred to in the first paragraph.

Article 43

1. If the assets of an investment institution are kept by a custodian, the investment institution or the investment company shall conclude a written management and custody agreement with the custodian.
2. The Bank may give the institutions as referred to in the first paragraph directives with regard to the agreement as referred to in the first paragraph.
3. Only a legal entity of which the sole object under the articles of incorporation is to keep and administer the goods in which an investment institution invests may act as a custodian.
4. If, pursuant to the investment policy of an investment institution, there is a risk that the assets of that institution and the assets of its custodian are insufficient to use them to pay the claims as referred to in Article 44, the assets of the investment institution shall be

kept by a custodian who only acts as custodian for that investment institution.

5. Articles 17, second paragraph, 19, 20, 27, 28, 29 and 70 shall be equally applicable to the custodian.

#### Article 44

1. The assets of an investment fund shall only be used to pay claims arising from:
  - a. debts related to the management and safekeeping of the fund;
  - b. participation rights.
2. Notwithstanding the first paragraph, other claims can be recovered from the assets of an investment fund, if it has been established that the claims referred to in the first paragraph can be paid, and that such claims will not arise anymore in the future.
3. If the assets of an investment fund in case of liquidation are insufficient to use them to pay the claims as referred to in the first paragraph, these assets shall not be used to pay the claims arising from the participation rights, until after they have been used to pay the claims related to the management and safekeeping of the fund.
4. If the claims, as referred to in the first paragraph, cannot fully be paid from the assets of the investment fund, the assets of the custodian shall first be used to pay these claims, without prejudice to the other reasons of priority recognized by this State Ordinance. The third paragraph shall be equally applicable.

#### Article 45

For the purposes of Article 44, a sub-fund shall be considered equivalent to an independent investment fund.

#### Article 46

1. An investment institution shall always act in the interest of the participants in the investment institution. It shall treat the participants in the investment institution under similar conditions and in similar ways.
2. The first paragraph shall be equally applicable to the manager of an investment institution and the custodian employed by an investment institution.

#### Article 47

1. An investment institution shall obtain information, in the interest of the client, about his financial position, knowledge, experience, objectives and risk appetite.
2. An investment institution shall tailor its services to the client to the information obtained pursuant to first paragraph.
3. The Bank may give investment institutions directives with regard to the information to be obtained as referred to in the first paragraph.

4. An investment institution shall retain the information obtained pursuant to the first paragraph for at least ten years after the termination of the service to the client.

#### Article 48

An investment institution shall not perform transactions at the expense of that institution with such a frequency or of such an amount that, given the circumstances, they apparently only serve to benefit the investment institution, the manager, the custodian or a party affiliated to the investment institution, manager or custodian.

#### Article 49

1. An investment institution shall have available a prospectus concerning the participation rights offered by it.
2. The prospectus as referred to in the first paragraph shall at least contain the following information:
  - a. information concerning the persons who determine the day-to-day policy of the investment institution;
  - b. information concerning the external auditor that audited the financial statements of the investment institution in respect of the last financial year;
  - c. information concerning the external auditor who gave opinions on the data included in the prospectus, as well as about the nature of the opinions;
  - d. general information concerning the investment institution and its policymakers, as well as the conditions, duration, investment objectives, investment policy and investment activities of the investment institution;
  - e. information concerning the participation rights in the investment institutions, in any case including the nature, characteristics, issue, purchase, marketability, risks and value assessment;
  - f. information concerning the costs for participants;
  - g. information concerning the manager of the investment fund;
  - h. information concerning the custodian of the investment fund;
  - i. a statement of the persons who determine the day-to-day policy of the investment institution, clearly stating name and position, of the fact that, to their knowledge, the data contained in the prospectus are accurate and complete;
  - j. an opinion on the truth and fairness of the data contained in the prospectus, signed by an external auditor;
  - k. an opinion of an external auditor that the prospectus contains the data prescribed by this State Ordinance.
3. The investment institution shall ensure that the prospectus is available to the public free of charge no later than the day of issue, the invitation of applications for participation or the written announcement of the invitation of applications. If the institution has a website, it shall also publish the prospectus on its website. Each



announcement in which participation rights are offered shall state where the prospectus is available to the public.

4. An investment institution shall update the data contained in the prospectus as soon as there is reason to do so.
5. The Bank may give investment institutions directives with regard to the content of the prospectus and the availability thereof.

#### Article 50

1. Simultaneously with the prospectus as referred to in Article 49, an investment institution shall make available information free of charge, which a client may reasonably require to be able to form an adequate opinion on the investment institution and the participation rights in question. If the investment institution has a website, it shall also publish this information on its website.
2. The information referred to in paragraph shall at least contain the following information:
  - a. the legal form of the investment institution;
  - b. the name, address and contact details of the investment institution;
  - c. the entry of the investment institution in the register kept by the Bank;
  - d. the internal complaints procedure of the investment institution as referred to in Article 30;
  - e. the law that applies, or the choice of law proposed by the investment institution;
  - f. the manner in which the obligation can be terminated, the term to be observed when doing so, the costs associated with the termination and the other consequences of termination of the obligation;
  - g. the statement that the value of the participation rights may both increase and decrease, and that the participants could receive less than they invested;
  - h. if the investment institution invests with money borrowed on behalf or for the account and risk of the participants:
    1. the risks involved;
    2. statement of any obligation for the participants in the investment institution to make up any deficits of the investment institution, whenever the losses exceed the investment, and
    3. statement of the maximum amount of the investments that can be purchased with borrowed money in absolute value or as a percentage of the managed capital;
  - i. if the duration of the investment institution makes this possible, the returns of the investment institution achieved in the past;
  - j. a description of the manner in which and the conditions under which the discontinuation and liquidation of the investment institution shall take place, notably with regard to the rights of the participants in the investment institution.

## Article 51

1. An investment institution shall make available the conditions that apply between the investment institution and the participants prior to offering participation rights. If the investment institution has a website, it shall also make available the conditions on its website.
2. An investment institution shall send a notice of a proposal to change the conditions as referred to in the first paragraph to the address of each participant. If the investment institution has a website, it shall also publish a proposal to change the conditions on its website. Simultaneously with the publication of the proposed changes, the investment institution shall inform the Bank thereof.
3. If, as a result of the change to the conditions as referred to in the first paragraph, rights or guarantees of the participants are reduced or charges are imposed on the participants, the change shall not take effect vis-à-vis the participants until three months after approval by the Bank, and the participants may cancel their participation rights subject to the usual conditions within this period.
4. The Bank may give investment institutions directives with regard to the content of the conditions and the information to be provided in the notice of a proposal to change the conditions.

## Article 52

1. An investment institution shall ensure that the information provided or made available by it or on behalf of it in the form of advertising or otherwise concerning participation rights offered by it or its services shall be factually correct, clear, and not misleading.
2. The Bank may give investment institutions directives with regard to the information to be published or provided about the participation rights offered, as well as the minimum conditions to be fulfilled by the advertising and other information as referred to in the first paragraph.

## Article 53

1. The prospectus as referred to in Article 49 and the information as referred to in Article 50 shall be drawn up in one or more languages, insofar as this is necessary, given the intended or possible distribution of the prospectus, for an adequate provision of information to the investors.
2. The Bank may give investment institutions directives with regard to the language or languages in which a prospectus as referred to in the first paragraph shall be drawn up.

## Article 54

1. Whenever an investment institution offers, sells, purchases or repays participation rights, it shall determine the net asset value of those rights.

2. At least once per year, an independent expert who is suitable in the opinion of the Bank shall value the assets of an investment institution that are not securities admitted to be traded on a stock exchange.
3. If the investment institution has a website, it shall immediately publish the information referred to in the first paragraph on its website, stating the date on which the net asset value was determined. If the investment institution does not have a website, it shall ensure that the information referred to in the first paragraph is made available in another appropriate manner.
4. The Bank may give investment institutions directives with regard to the determination of the net asset value as referred to in the first paragraph and the valuation of assets as referred to in the second paragraph.

#### Article 55

If an investment institution suspends the purchase of participation rights or the repayment of such rights, it shall immediately inform the Bank thereof.

#### Article 56

If the Bank is of the opinion that the name used or to be used by an investment institution in Aruba could lead to confusion, it may demand that the investment institution changes the name, or that an explanatory note is added to the name of the investment institution.

#### Article 57

1. An investment company of which the license has been revoked shall be dissolved by the Court at the request of the Bank. The Court shall appoint one or more liquidators.
2. The assets of an investment fund managed by a manager of which the license has been revoked shall be liquidated within a period to be determined by the Bank. The Court shall designate one or more liquidators at the request of the Bank.
3. The dissolution or liquidation as referred to in the first and second paragraph shall not take place until after the revocation of the license has become final.
4. An investment company that does not dispose of a license as referred to in Article 9, second paragraph, or the assets of an investment fund managed by a manager that does not dispose of a license as referred to in Article 9, second paragraph, may be dissolved by the Court at the request of the Bank, or be liquidated by one or more liquidators to be designated by the Court, within a period to be determined by the Court. The Court shall designate one or more liquidators at the request of the Bank.
5. The costs of liquidation shall form estate debts.

## § 7. Additional provisions concerning holders of a stock exchange

### Article 58

The holder of a stock exchange shall ensure that the holding of the stock exchange, the rules to be applied to the stock exchange, the application of those rules and the supervision of compliance with those rules comply with what is necessary with a view to an adequate functioning of the securities markets and the position of the investors in these markets.

### Article 59

1. The holder of a stock exchange shall dispose of:
  - a. rules and procedures providing for a fair and orderly trade, as well as objective criteria for the efficient execution of orders;
  - b. clear and transparent rules concerning the admission of securities to be traded on the stock exchange;
  - c. objective, transparent and non-discriminatory rules concerning access to trade or the membership of the stock exchange;
  - d. rules concerning the initial, ongoing, or ad hoc information provision by issuing institutions that have issued securities admitted to be traded on the stock exchange;
  - e. effective rules and procedures to ensure compliance with the rules applied by the stock exchange;
  - f. effective rules for an efficient and timely conduct of transactions carried out through the stock exchange.
2. The holder of a stock exchange shall report each intended change to rules and procedures as referred to in the first paragraph to the Bank. The change shall not be implemented without the permission of the Bank.
3. The Bank may give holders of a stock exchange directives with regard to the first and second paragraph.

## § 8. Administrators

### Article 60

By state decree containing general administrative orders, administrators may be placed under the supervision of the Bank in accordance with the rules to be laid down in that state decree. In addition, one or more articles of this State Ordinance can be declared equally applicable.

## § 9. Qualified holdings

### Article 61

1. Without the permission of the Bank, a natural person or legal entity may not:

- a. hold, acquire or increase a qualified holding in a securities broker, asset manager, investment company, manager of an investment fund or holder of a stock exchange;
  - b. exercise any control, associated with a qualified holding in a securities broker, asset manager, investment company, manager of an investment fund or holder of a stock exchange.
2. The Bank shall give the permission applied for as referred to in the first paragraph, unless the Bank is of the opinion that the reliability of the applicant or, if the applicant is a legal entity, of the persons that determine or co-determine the policy of this legal entity, is not beyond doubt, or that there is or could be question otherwise of any undesired influence on the policy of the enterprise or institution as a result of the qualified holding in the enterprise or institution.
3. If any control, associated with an enterprise or institution as referred to in the first paragraph, is exercised without having obtained permission for that act, or without having observed the restrictions attached to a permission given, a decision also made because of the control exercised shall be subject to annulment by the Court on demand of the Bank, if the decision would have been different or would not have been made, if the control had not been exercised, unless permission is given as yet, or the restrictions not observed are withdrawn before the date of the judgment. If necessary, the Court shall provide for the consequences of the annulment.

#### Article 62

1. An application for a permission as referred to in Article 61, first paragraph, shall at least contain information about:
  - a. the identity, antecedents, a certificate of good conduct and other data to be determined by the Bank, based on which the Bank can assess whether the reliability of the applicant and, if the applicant is a legal entity, of the person who determine the day-to-day policy of the applicant ;
  - b. the size of the qualified holding;
  - c. documents showing the financial position and the legal group structure of the applicant.
2. A permission granted as referred to in Article 61, first paragraph, shall be announced in the Official Gazette of Aruba, as well as in a manner to be determined by the Bank, except if the Bank is of the opinion that publication would or could lead to disproportionate favoring of or prejudice to those involved in the decision or third parties.

#### Article 63

The integrity of persons holding a qualified holding in an enterprise or institution referred to in Article 61, first paragraph, and, if the holder of a qualified holding is a legal entity, the persons who determine the day-to-day policy of this legal entity shall be beyond doubt.

## Article 64

1. A natural person or legal entity, whose qualified holding in a securities broker, asset manager, investment company, manager of an investment fund or holder of a stock exchange changes in such a way that the amount of this holding falls below 10, 20, 33 or 50 percent shall immediately notify the Bank thereof in writing.
2. A securities broker, asset manager, investment company, manager of an investment fund or holder of a stock exchange shall inform the Bank in writing in the month of July of each year of the identity of each natural person or legal entity holding a qualified holding in this enterprise or institution, insofar as such information is known to it. A securities broker, asset manager, investment company, manager of an investment fund or holder of a stock exchange shall also immediately inform the Bank of each acquisition or disposal of or change to a qualified holding in this enterprise or institution, as soon as it becomes aware of same, as a result of which the amount of this participation exceeds or falls below 10, 20, 33 or 50 percent, respectively.

## § 10. Accounting records and reporting

## Article 65

1. A securities broker, asset manager, investment institution, custodian or holder of a stock exchange shall submit its financial statements and annual report to the Bank each year within six months after the end of the financial year.
2. The financial statements shall be accompanied by an opinion issued by an external auditor on the truth and fairness of the financial statements.
3. The Bank may give securities brokers, asset managers, investment institutions, custodians or holders of a stock exchange directives with regard to the content of the financial statements and the form and manner of submission.
4. The Bank may grant full or partial exemption from the obligations as referred to in the first through third paragraph.

## Article 66

A securities broker, asset manager, investment institution, custodian or holder of a stock exchange shall periodically provide the Bank with information reasonably required for the performance of its duties pursuant to this State Ordinance, in accordance with the directives given by the Bank with regard to the content of this information and the form, manner, periodicity and the periods within which same shall be provided, as well as concerning the certification of this information by an external auditor.

## § 11. External auditor

### Article 67

An external auditor who audits the truth and fairness of the financial statements or other information of a securities broker, asset manager, investment institution, custodian or holder of a stock exchange shall immediately notify the Bank of each circumstance that came to his knowledge during the conduct of the audit, and that:

- a. is in conflict with the rules laid down by or pursuant to this State Ordinance;
- b. is in conflict with obligations imposed on the enterprise or institution concerned pursuant to this State Ordinance;
- c. threatens or could threaten the continued existence of the enterprise or institution;
- d. leads or could lead to the refusal to issue an opinion on the truth and fairness or to make a reservation.

### Article 68

1. If the Bank deems so necessary, it may call an external auditor to give an oral explanation to a notification as referred to in Article 67.
2. The Bank shall allow the securities broker, asset manager, investment institution, custodian or holder of a stock exchange concerned to be present at the oral explanation.

### Article 69

The external auditor who has given a notification pursuant to Article 67 shall not be liable for any loss suffered by a third party as a result thereof, unless it is proven that, given all facts and circumstances, he should not have proceeded in reason to giving the notification or providing information.

## § 12. Reporting changes

### Article 70

1. A securities broker, asset manager, investment institution or holder of a stock exchange shall inform the Bank in writing of the intention to appoint a person as referred to in Article 11, first paragraph, subparagraph d.
2. The securities broker, asset manager, investment institution or holder of a stock exchange shall not carry out the intention as referred to in the first paragraph without the prior permission in writing of the Bank.
3. As regards the intention as referred to in the first paragraph, the securities broker, asset manager, investment institution or holder of

a stock exchange shall submit the following information to the Bank:

- a. the identity, antecedents, a certificate of good conduct and other information to be determined by the Bank, based on which the Bank can assess whether the reliability of the person to be appointed is beyond doubt;
- b. information based on which the Bank can assess whether the person to be appointed is suitable for the conduct of the business of the enterprise or institution and the performance of his duties.

#### Article 71

1. A securities broker, asset manager, investment institution or holder of a stock exchange shall notify the Bank in writing of a change to the antecedents of a person as referred to in Article 11, first paragraph, subparagraph d.
2. The notification as referred to in the first paragraph shall be given immediately after the enterprise or institution has become aware of the change.

#### Article 72

1. A securities broker, asset manager, investment institution or holder of a stock exchange shall notify the Bank in writing of the upcoming retirement of a person as referred to in Article 11, first paragraph, subparagraph d.
2. The notification as referred to in the first paragraph shall be given immediately after the enterprise or institution has become aware of this fact.

#### Article 73

1. A securities broker, asset manager, investment institution or holder of a stock exchange shall notify the Bank in writing of the intention to amend its articles of incorporation or bylaws.
2. The securities broker, asset manager, investment institution or holder of a stock exchange shall not carry out the intention as referred to in the first paragraph without the prior permission of the Bank.

#### Article 74

1. A securities broker, asset manager, investment institution or holder of a stock exchange shall notify the Bank in writing of a change to:
  - a. the name, address or legal form of the enterprise or institution;
  - b. if applicable, the registered office, the name given in the articles of incorporation and the trade name or trade names;
  - c. if applicable, the number of registration in the Trade Register;



- d. the formal and actual control structure within the enterprise or institution; and
  - e. if applicable, the address of a branch office located abroad.
2. The notification as referred to in the first and second paragraph shall be given within two weeks after the change occurred.

## CHAPTER 5

### Securities markets

#### § 1. Offering of securities

##### Article 75

1. It is prohibited to offer securities to the public in Aruba or to admit securities to be traded on a stock exchange held in Aruba, unless a prospectus concerning the offer is generally available and has been approved by the Bank.
2. Article 5, first through third paragraph, shall equally apply to applications for being granted approval of a prospectus as referred to in the first paragraph.
3. The first paragraph shall not apply to the offering of securities, if:
  - a. they concern participation rights in an investment institution;
  - b. they are offered exclusively to professional market participants;
  - c. they are offered to less than 10 persons;
  - d. the securities offered can only be acquired for a consideration exceeding an amount to be determined by a regulation from the Minister, or
  - e. the nominal value of the securities individually exceeds an amount to be determined by a regulation from the Minister.
4. Furthermore, the first paragraph shall not apply to categories of securities excluded by a regulation from the Minister.

##### Article 76

1. The prospectus as referred to in Article 75 shall contain all information that, given the nature of the issuing institution and of the securities offered to the public or admitted to be traded on the stock exchange, is important to form a sound opinion on the assets, financial position, results and prospects of the issuing institution and any guarantor, and the rights attaching to these securities.
2. The prospectus as referred to in paragraph 1 shall at least contain the following information:
  - a. information concerning the persons responsible for the prospectus and, if this is a legal entity, the persons who determine the day-to-day policy of this legal entity;
  - b. information concerning the external auditors that made statements in respect of the information contained in the prospectus and concerning the nature of the statements;

- c. general information concerning the issuing institution and its policymakers, as well as the objective, the fiscal position and the group of the issuing institution;
  - d. information concerning the activities and intended activities of the issuing institution, including the risks associated with these activities;
  - e. information concerning the capital of the issuing institution;
  - f. information concerning the assets, financial position and results of the issuing institution;
  - g. facts and circumstances that are or could be of significant influence on the current or future financial or fiscal position of the issuing institution;
  - h. information concerning the main investments in progress or intended;
  - i. individual data concerning enterprises or institutions of which the issuing institution holds a part of the capital that could significantly influence the valuation of the assets and liabilities, the financial position or the results of the issuing institution;
  - j. information concerning the board, management and supervision of the issuing institution;
  - k. information concerning the recent developments and the prospects of the issuing institution;
  - l. information concerning the rights and obligations attached to the securities;
  - m. a statement of the persons referred to in subparagraph a, clearly stating name and position, of the fact that, to their knowledge, the information contained in the prospectus is correct, and that the material risks the issuing institution is confronted with have been described in the prospectus;
  - n. an opinion on the truth and fairness of the information contained in the prospectus, signed by an external auditor;
  - o. an opinion of an external auditor that the prospectus contains the information prescribed by this State Ordinance.
3. The information as referred to in the first paragraph may not be in conflict or be contrary to other information available at the Bank concerning the issuing institution, the offerer of the securities or the applicant of the admission of the securities to be traded on the stock exchange. The information shall be presented in a manner that is understandable to a reasonably informed and carefully acting person.
  4. The Bank may give issuing institution, whether or not per category of securities, directives with regard to the content or layout of the prospectus and the availability thereof.

#### Article 77

1. All important new facts that present themselves or are established between the date of approval of a prospectus as referred to in Article 75 and the date on which the offering of the securities ends or the trade in the securities begins, and that may be important to

the valuation of the assets, the financial position, the results and the prospects of the issuing institution and of the rights and obligations attached to the securities, as well as material omissions, inaccuracies or errors in the prospectus are stated or corrected in a document that shall be made generally available as a supplement to the prospectus.

2. The document as referred to in the first paragraph shall be made available to the Bank prior to its general availability.

#### Article 78

1. The prospectus as referred to in Article 75 and the document as referred to in Article 77 shall be drawn up in one or more languages, insofar as this is necessary, given the intended or possible distribution, for an adequate provision of information to the public.
2. The Bank may give directives with respect to the language or languages in which a prospectus and the document as referred to in Article 77 shall be drawn up.

#### Article 79

1. An issuing institution, other than an issuing institution of which the securities are admitted to be traded on a stock exchange, for which a license as referred to in Article 9, third paragraph, has been granted, shall make its annual financial reports generally available within four months after the end of the financial year. The annual financial reports shall in any case include the financial statements and the annual report approved by an external auditor.
2. The first paragraph shall not apply, if it concerns an offering as referred to in Article 75, third paragraph, or securities as referred to in Article 75, fourth paragraph.
3. By or pursuant to state decree containing general administrative orders, further rules may be laid down with regard to the first paragraph.

#### Article 80

1. An issuing institution or offerer of securities shall ensure that advertising relating to the offering of securities:
  - a. shall state that a prospectus is or will be made generally available, as well as where the prospectus can be obtained;
  - b. shall be recognizable as advertising and contain information that is not incorrect or misleading and inconsistent with the information that has been or will be included in the prospectus.
2. The first paragraph shall not apply, if it concerns an offering as referred to in Article 75, second paragraph, or securities as referred to in Article 75, third paragraph.

#### § 2. Market abuse

## Article 81

1. It is prohibited for each person to use inside information to conduct or bring about a transaction in or from Aruba in:
  - a. securities listed on a stock exchange for which a license as referred to in Article 9, third paragraph, has been granted, or on a foreign-based and officially authorized stock exchange, or in securities that are likely to be listed on such a stock exchange soon;
  - b. securities of which the value is partly determined by the value of securities referred to in subparagraph a.
2. The prohibition in the first paragraph shall not apply to:
  - a. an intermediary who, only disposing of inside information with regard to the trade, acts according to the rules of good faith for the benefit of clients;
  - b. a legal entity, company or institution of which the employees who are involved in conducting or bringing about the transaction only dispose of inside information with regard to the trade;
  - c. the person who conducts or brings about a transaction to comply with an enforceable obligation already existing at the time that he became aware of the inside information;
  - d. transactions within the framework of the monetary policy, the foreign exchange policy or public debt management;
  - e. assigning securities within the framework of personnel rules to directors, members of the board of supervisory directors or another body that supervises the policy and the day-to-day affairs, or employees, if a consistent course of action is followed with respect to the conditions and periodicity of the rules;
  - f. exercising options or similar rights granted within the framework of personnel rules as referred to in subparagraph e, on the expiration date of the right in question or within a period of five workdays prior to that date, as well as selling the securities acquired by exercising these rights, within this period, if, in this last case, the party entitled informed the issuing institution in writing, at least four months prior to the expiration date, that it will proceed to sale, or granted an irrevocable power of attorney to sell to the issuing institution;
  - g. a transaction that needs to be conducted or brought about to be able to comply with an obligation to transfer shares or depositary receipts for shares;
  - h. issuing by way of dividend distribution or, other than in the form of optional dividend, acquiring shares or depositary receipts for shares;
  - i. selling securities assigned within the framework of personnel rules as referred to in subparagraph e, immediately after sale under the conditions of the assignment becomes possible for the first time, while the party concerned immediately uses the

proceeds of the sale to pay a tax liability arising from the assignment.

3. By or pursuant to state decree containing general administrative orders, it may be determined that the prohibition referred to in the first paragraph shall not apply to categories of transactions designated by or pursuant to that state decree. Within a category, a distinction can be made between persons conducting a transaction or the circumstances under which a transaction is conducted.

#### Article 82

1. It is prohibited for each person disposing of inside information:
  - a. to disclose the information of which he has prior knowledge to a third party, other than in the normal course of work, a profession or the normal performance of duties;
  - b. to advise or incite a third party to conduct or bring about transactions in securities as referred to in Article 81, first paragraph, and of which he has inside information.
2. The prohibition as referred to in the first paragraph, opening lines and subparagraph b, shall not apply to a legal entity, company or institution of which the employees involved in advising do not dispose of inside information.
3. By or pursuant to state decree containing general administrative orders, rules may be laid down with respect to the cases in which and the circumstances under which there is question of disclosure in the normal course of work, a profession or the normal performance of duties as referred to in the first paragraph, subparagraph a.

#### Article 83

1. It is prohibited to conduct or bring about a transaction in securities as referred to in Article 81, first paragraph:
  - a. that gives an incorrect or misleading signal or such a signal is to be feared as regards the supply of, the demand for or the price of those securities;
  - b. the purpose of which is to keep the price of these securities at an artificial level;
  - c. for which use is made of deceit or deception.
2. It is prohibited to distribute information that gives an incorrect or misleading signal or such a signal is to be feared as regards the supply of, the demand for or the price of those securities, while the distributor of that information knows or should reasonably suspect that this information is incorrect or misleading.
3. The first paragraph, opening lines, and subparagraphs a and b shall not apply, if the person that conducted or brought about the transaction proves that his motive to do so is justified, and that the transaction is in accordance with usual market practices on the stock exchange in question. By or pursuant to state decree containing general administrative orders, other categories of transactions can be designated to which the prohibitions referred to

- in the first paragraph, opening lines and subparagraphs a and b shall not apply.
4. The first paragraph, opening lines, and subparagraphs a and b shall not apply to conducting or bringing about transactions within the framework of the monetary policy, the foreign exchange policy or public debt management.
  5. The second paragraph shall not apply, insofar as it concerns the distribution of information by journalists acting in their normal professional capacity, taking into account the rules that apply within their occupational group, unless they obtain benefits or profits from the distribution of that information.
  6. The second paragraph shall not apply to the distribution of information within the framework of the monetary policy, the foreign exchange policy or public debt management.

## CHAPTER 6

### Control and capital interest in listed companies

#### § 1. General provisions

##### Article 84

1. A person shall be deemed to dispose of a capital interest held by the enterprise controlled by him, as well as the votes that the enterprise controlled by him may cast. A controlled enterprise shall be deemed not to dispose of a capital interest or voting rights.
2. A person shall dispose of the votes he may cast as a usufructuary or pledgee, if the applicable law so provides and the relevant statutory requirements have been fulfilled.
3. A person shall be deemed to dispose of a capital interest held by a third party at his expense, as well as the votes this third party may cast.
4. A person shall be deemed to dispose of a capital interest held by the spouse not living permanently separated from that person, by the person with whom that person lives together, as if parties were married, by minor children over whom that person exercises authority or by blood relatives and relatives by marriage who are largely supported by that person, as well as the votes that this third party may cast.
5. By state decree containing general administrative orders, other situations may be designated, in which a person has or is deemed to have a capital interest or voting rights.

## § 2. Notification of control and capital interest

### Article 85

1. Any person who obtains or loses a capital interest in a listed company, due to which, as he should know, the percentage of the capital held by him reaches, exceeds or falls below 5, 10,  $33\frac{1}{3}$ , 50 or  $66\frac{2}{3}$  percent, shall immediately notify the Bank hereof in writing.
2. Any person who obtains or loses voting rights in a listed company, due to which, as he should know, the percentage of the voting rights held by him reaches, exceeds or falls below 5, 10,  $33\frac{1}{3}$ , 50 or  $66\frac{2}{3}$  percent, shall immediately notify the Bank hereof in writing.
3. Any person who disposes of, as he should know, 5 percent or more of the capital interest or the voting rights in a limited liability company on the date on which this company becomes a listed company under the laws of Aruba, shall immediately notify the Bank hereof in writing.

### Article 86

A notification as referred to in Article 85, first, second or third paragraph, shall contain:

- a. name, domicile and address of the person obligated to notify and, if applicable, the nature of his enterprise or company;
- b. name of the company;
- c. percentage of the capital interest and the percentage of the voting rights held by the person obligated to notify;
- d. the composition of the percentages mentioned in subparagraph c;
- e. the date on which the obligation to notify has arisen.

## § 3. Public offer

### Article 87

1. By state decree containing general administrative orders, rules may be laid down with regard to a public offer. In that case, these rules shall in any case pertain to the obligation to make a public offer, the extent of the control required by making a public offer, the requirements and powers that apply to a person who obtains or intends to obtain this control or who makes or intends to make a public offer and the requirements and powers that apply to the company in which the control is obtained or for the shares of which a public offer is made.
2. A public offer shall be understood to be an offer for all shares of a listed company made by means of a public announcement, except for the shares held by the company itself, while the person making the offer has the intention to acquire these shares.

## CHAPTER 7

### Secrecy and exchange of information

#### Article 88

1. A person who performs or performed any duty for the purposes of this State Ordinance or a decision made pursuant to this State Ordinance is not allowed to use data or information provided or obtained pursuant to this State Ordinance or received from a foreign body as referred to in Article 89, further or differently or to make it known further or differently than required for the performance of his duty or by this State Ordinance.
2. Notwithstanding the first paragraph, the Bank shall be authorized to make statements by using data or information obtained in the performance of its duty pursuant to this State Ordinance, provided these data or that information cannot be traced back to individual persons or enterprises or institutions.
3. The first paragraph shall not affect the obligation to make a statement, in accordance with the Code of Criminal Procedure of Aruba (AB 1996 No. 75), as a witness in criminal cases with respect to data or information obtained in the performance of the duty assigned to him pursuant to this State Ordinance. Likewise, it shall not affect the obligation to make a statement, in accordance with the Code of Civil Procedure of Aruba (AB 2005 No. 34), as a witness or a party in a personal appearance of parties in civil cases with respect to data or information obtained in the performance of the duty assigned to him pursuant to this State Ordinance, and this on the understanding that such an obligation shall only apply, insofar as it concerns an enterprise or institution supervised by the Bank, which has been declared bankrupt or has been dissolved by court decision, and that it shall not apply to data or information related to enterprises or institutions that are or were involved in an attempt to enable the enterprise or institution in question to continue its business.

#### Article 89

1. Notwithstanding Article 88, the Bank shall be authorized to exchange data and information obtained in the performance of the duties assigned to it pursuant to this State Ordinance with a foreign supervisory authority.
2. The authority, referred to in the first paragraph, shall not be exercised, if:
  - a. the purpose for which the data or information will be used has not been sufficiently specified;
  - b. the intended use of the data or information is not in line with the supervision of financial markets or persons working in these markets;



- c. provision of the data or information is contrary to public order or the laws of Aruba;
  - d. the secrecy of the data or information has not been sufficiently guaranteed;
  - e. provision of the data or information is or could be contrary in reason to the interests this State Ordinance seeks to protect;
  - f. it has not been sufficiently guaranteed that the data or information will not be used for a purpose other than for which they are provided.
3. Insofar as the data or information, referred to in the first paragraph, have been obtained from a foreign supervisory body, the Bank shall not provide them to another foreign supervisory body, unless the body from which the data or information have been obtained has approved the provision of the data and information and, if applicable, has approved the use for a purpose other than for which the data or information have been provided.
  4. If a foreign supervisory body requests the Bank to use data or information, which the Bank provided pursuant to the first or second paragraph, for a purpose other than for which they have been provided, the Bank shall only comply with that request, if:
    - a. the intended use is not contrary to the first or second paragraph; or
    - b. the supervisory body concerned could obtain these data or information from Aruba in a way other than provided for in this State Ordinance, with due observance of the applicable legal procedures.

#### Article 90

1. For the performance of its duty pursuant to this paragraph, the Bank may demand data or information from anyone who can reasonably be suspected to dispose of data or information that may be of importance in reason to the requesting body, if this is necessary for the performance of the duty of a supervisory body referred to in Article 89, first paragraph. Article 93, third and fourth paragraph, shall be equally applicable.
2. At the request of a supervisory body as referred to in the first paragraph, the Bank may ask data and information from or conduct or arrange for third parties to conduct an investigation at a securities broker, asset manager, investment institution, manager, custodian, administrator or holder of a stock exchange, or at anyone who can reasonably be suspected to dispose of data or information that may be of importance in reason to the requesting body.
3. The person who has been asked for data or information as referred to in the second paragraph shall provide same within a reasonable period to be set by the Bank.
4. The person at whom an investigation as referred to in the second paragraph is conducted shall give all cooperation necessary for the proper conduct of that investigation. Article 93, third and fourth paragraph, shall be equally applicable.

5. The Bank may allow that an officer of a supervisory body as referred to in the first paragraph participates in the implementation of a request as referred to in the second paragraph. The officer as referred to in the first sentence shall comply with the instructions of the employee of the Bank, charged with the implementation of the request. The order as referred to in the fourth paragraph shall also apply to the officer referred to in the first sentence.

#### Article 91

Notwithstanding Article 88, the Bank shall be authorized to provide data and information obtained in the performance of the duties assigned to it pursuant to this State Ordinance to a body charged with exercising criminal powers pursuant to the Code of Criminal Procedure of Aruba.

#### Article 92

1. Notwithstanding Article 88, the Bank shall be authorized to provide data and information obtained in the performance of the duties assigned to it pursuant to this State Ordinance to a bankruptcy trustee appointed under the Bankruptcy Ordinance or pursuant to Article 96, insofar as these data or information are/is useful for the performance of his duties.
2. The Bank shall not provide any confidential data or information as referred to in the first paragraph, if the provision of these data is reasonably in conflict or could conflict with the interests this State Ordinance seeks to protect. Furthermore, it shall not provide any confidential data or information obtained from another supervisory body, if the other supervisory body does not consent to the provision of such data or information.
3. A bankruptcy trustee who has been appointed in the bankruptcy of an enterprise or institution falling under the scope of this State Ordinance shall be authorized to provide confidential data or information as referred to in the first paragraph to the Court, notwithstanding Article 88, insofar as this is required for the liquidation.

### CHAPTER 8

#### Supervision and enforcement

##### § 1. Supervision of the compliance

#### Article 93

1. The persons employed by the Bank and designated for this purpose by the President of the Bank shall be charged with supervising the compliance with the provisions laid down by or pursuant to this

State Ordinance. Such a designation shall be published in the Official Gazette of Aruba.

2. The persons designated pursuant to the first paragraph may exercise the supervision in a risk-oriented manner. They shall report on the exercise of the powers mentioned in the third paragraph to the President of the Bank or to the executives within the Bank to be designated in writing by the President.
3. Only to the extent reasonably required for the performance of their duties, the employees of the Bank designated pursuant to the first paragraph shall be authorized:
  - a. to request all information;
  - b. to demand inspection of all business books, documents and other data carriers and to make transcripts or copies thereof, and to temporarily take them along for this purpose;
  - c. to enter all places, except for houses without the express permission of the occupant, accompanied by persons designated by them.
4. If necessary, access to a place as referred to in the third paragraph, subparagraph c, shall be gained with the aid of the police.
5. The State Decree containing General Provisions on the Exercise of Supervision (AB 1998 No. 70) or the state decree replacing same shall apply to the way in which the persons designated pursuant to the first paragraph will perform their duties.
6. Any person shall give the persons designated pursuant to the first paragraph all cooperation requested based on the third paragraph.

#### Article 94

1. The Bank shall be authorized to consult the registers of and to ask all information from the Chamber of Commerce and Industry, the Department of Land Surveying and Real Estate Registration, the Civil Registry, as well as other bodies to be designated by state decree containing general administrative orders.
2. The bodies mentioned in the first paragraph shall give the Bank all cooperation free of charge and within the reasonable period set by it, as requested pursuant to the first paragraph.

#### § 2. Enforcement

#### Article 95

1. In case of noncompliance with the provisions laid down by or pursuant to this State Ordinance, the Bank may give an instruction to follow a certain course of action concerning specified issues within a period to be determined by it.
2. If the Bank perceives signs that, in its opinion, jeopardize or could jeopardize the financial situation, sound corporate governance or the ethical or controlled business operations of a securities broker, asset manager, investment institution or holder of a stock exchange, it may give this enterprise or institution an instruction to follow a

certain course of action concerning specified issues within a period to be determined by it.

3. If the Bank perceives signs of a development that, in its opinion, as a result of the qualified holding in a securities broker, asset manager, investment company, or manager of an investment fund or holder of a stock exchange, there is question of influence on that enterprise or institution, which is or could be contrary to a sound policy for securities brokers, asset managers, investment companies, and managers of an investment fund or holders of a stock exchange, it may give this holder of a qualified holding an instruction to follow a certain course of action concerning specified issues within a period to be determined by it.

#### Article 96

1. If the Bank has not received a satisfactory answer from the securities broker, asset manager, investment company, or manager of an investment fund or holder of a stock exchange within two weeks after the date of the instruction as referred to in Article 95, or if its instruction has not or not sufficiently been complied with in its opinion, the Bank may appoint one or more persons receiver for all or certain bodies of that securities broker, asset manager, investment company, or manager of an investment fund or holder of a stock exchange.
2. If the cases mentioned in Article 95, first or second paragraph, require immediate action, the Bank may immediately implement the first paragraph, without application of Article 95, first or second paragraph, after the securities broker, asset manager, investment company, or manager of an investment fund or holder of a stock exchange has been given the opportunity to express its opinion on the intended decision.

#### Article 97

1. The decision to appoint a receiver shall contain a description of the interests and instructions by which the receiver shall be guided.
2. The Bank shall appoint the receiver for a period not exceeding two years, with the possibility to extend this period by one year at most each time. An extension shall become effective immediately.
3. As of the date on which the decision to appoint the receiver has been announced to the securities broker, asset manager, investment company, or manager of an investment fund or holder of a stock exchange, the bodies concerned shall only exercise their powers after approval by the receiver and with due observance of the instructions of the receiver.
4. After the appointment of a receiver:
  - a. the bodies of the securities broker, asset manager, investment company, manager of an investment fund or holder of a stock exchange shall fully cooperate with the receiver;

- b. each person forming part of the body of the enterprise or institution that performed acts contrary to the third paragraph shall be jointly and severally liable towards the enterprise or institution for any loss resulting from these acts, unless he cannot be blamed for the performance of these acts, and he did not fail to take measures to avert the consequences thereof;
  - c. the acts as referred to in subparagraph b, insofar as it concerns legal acts, shall be subject to annulment, if the other party knew or should have known that the approval required for these acts pursuant to the third paragraph was lacking.
5. The costs and remuneration of a receiver appointed pursuant to Article 96 shall be payable by the securities broker, asset manager, investment company, manager of an investment fund or holder of a stock exchange concerned.
  6. The Bank may allow bodies for which a receiver has been appointed to perform certain legal acts without the approval of the receiver.
  7. The receiver shall periodically inform the Bank about his progress and shall provide the Bank with all data and information required for the performance of its duties pursuant to this State Ordinance.
  8. The Bank may give the receiver further instructions at all times.
  9. The Bank may replace the receiver designated by it at all times.
  10. As soon as the circumstance that led to the appointment of the receiver no longer exists, the Bank shall withdraw the appointment of the receiver. The decision to withdraw shall be recorded in writing and be communicated immediately to the enterprise or institution concerned.

#### Article 98

1. If an external auditor does not offer the guarantees necessary that he will be able to properly perform his duties as regards a securities broker, asset manager, investment company or holder of a stock exchange, the Bank may decide as regards this external auditor that he is no longer authorized to issue the opinions referred to in this State Ordinance concerning that enterprise or institution.
2. The Bank shall promptly inform the enterprise or institution in question of a decision as referred to in the first paragraph.

#### Article 99

1. For the violation of the provisions laid down by or pursuant to Articles 4, first paragraph, 5, fifth paragraph, 6, second paragraph, 7, first paragraph, 8, fourth paragraph, 9, 10, second paragraph, 16, 17, 18, first and second paragraph, 19, 20, first and third paragraph, 21 through 31, 32, first, 33 through 39, 40, first paragraph, 41 through 43, 46 through 52, 53, first paragraph, 54 through 56, 58 through 59, 60, second sentence, 61, first paragraph, 63, 64, 65, first through third paragraph, 66, 67, 68, first paragraph, 70 through 74, 75, first and second paragraph, 76, 77, 78, first

paragraph, 79, first and third paragraph, 80, first paragraph, 81, first paragraph, 82, first paragraph, 83, first and second paragraph, 85, 86, 87, first paragraph, 90, third and fourth paragraph, 93, sixth paragraph, 95 and 97, third and fourth paragraph, subparagraph a, the Bank may impose a penalty charge order.

2. For the violations referred to in the first paragraph, the Bank may also impose an administrative fine not exceeding Afl. 1,000,000.- per separate violation.
3. Violations can be committed by natural persons and legal entities. Article 1:127, second and third paragraph, of the Criminal Code of Aruba shall be equally applicable.
4. The Bank shall adopt guidelines for the exercise of the powers referred to in the first and second paragraph and shall record them in a policy document. The policy document shall in any case contain a description of the procedures to be followed when exercising the powers referred to in the first and second paragraph. The policy document as referred to in the first sentence, as well as all modifications to be introduced to same afterwards shall be published in advance in a manner to be determined by the Bank.
5. By state decree containing general administrative orders, rules shall be laid down with regard to the principles for the determination of the amount of the order subject to a penalty and the administrative fine per violation. The violations shall be classified into categories based on the severity of the violation, with the corresponding basic amounts, minimum amounts and maximum amounts.
6. Forfeited penalties and administrative fines shall accrue to the Bank.

#### Article 100

1. If, at the time of committing an violation, a period of five years has not yet expired since an administrative fine was imposed on the violator for a similar violation, the amount of the administrative fine as referred to in Article 99, second paragraph, shall be doubled for each separate violation.
2. Notwithstanding Article 99, second paragraph, the Bank may set the amount of the administrative fine at a maximum of twice the amount of the benefit obtained by the violator as a result of the violation, if his benefit exceeds Afl. 1,000,000.-.

#### Article 101

The Bank shall keep a record of the acts performed within the framework of an investigation prior to imposing an administrative fine, stating the persons who performed the acts.

## Article 102

1. If the Bank intends to impose an administrative fine, it shall notify the person concerned thereof, stating the grounds on which the intention is based.
2. The Bank shall give the person concerned the opportunity to express his views, either in writing or orally, within a reasonable period, before imposing the administrative fine by decision.
3. If, after the person concerned has expressed his views, the Bank decides that no administrative fine will be imposed for the violation, the person concerned shall be notified thereof in writing.

## Article 103

The person against whom an act has been performed by the Bank, based on which he could reasonably conclude that an administrative fine will be imposed on him for an violation of the provisions laid down by or pursuant to this State Ordinance, is not obligated to make any statement in respect thereof. He shall be notified thereof before being requested to provide information.

## Article 104

1. The power to impose an administrative fine shall lapse:
  - a. if criminal proceedings have been instituted on account of the violation, and the examination in court has commenced, or the right to institute criminal proceedings has lapsed pursuant to Article 1:149 of the Criminal Code of Aruba;
  - b. three years after the day on which the noncompliance with the provision was discovered.
2. The period as referred to in the first paragraph, subparagraph b, shall be interrupted by publication of the decision by which the administrative fine was imposed.
3. The right to institute criminal proceedings shall lapse, if an administrative fine was already imposed on the person concerned for the same violation.
4. The Bank and the Public Prosecution Service shall consult periodically on the choice between imposing an administrative fine or criminal-law sanction to avoid unlawful concurrence of those sanctions.

## Article 105

1. At the request of the violator, the Bank may withdraw a penalty charge order, suspend the duration thereof for a specific period or reduce the penalty, if the violator is permanently or temporarily unable in whole or in part to comply with his obligations.
2. Furthermore, at the request of an violator, the Bank may withdraw a penalty charge order, if the decision has been effective one year without having forfeited the penalty.

#### Article 106

1. The administrative fine shall be payable within six weeks after the date of the decision by which it has been imposed.
2. The administrative fine shall be increased by the statutory interest as of the day on which six weeks have expired since the publication of the decision.

#### Article 107

1. If a forfeited penalty or fine has not been paid within the period set by the Bank, the violator shall be demanded in writing to pay the amount of the penalty or the fine as yet within two weeks, increased by the costs of the demand.
2. In the absence of payment, the amount and the costs as referred to in the first paragraph, shall be increased by the collection costs, collected by the Bank by way of a writ of execution.
3. The writ of execution shall be published by serving a process as referred to in the Code of Civil Procedure of Aruba and shall constitute entitlement to enforcement, which may be enforced while applying the provisions of this Code.
4. The writ of execution shall in any case state:
  - a. the words “writ of execution” in the heading;
  - b. the amount of the collectable principal sum, increased by the statutory interest due;
  - c. the decision or the statutory provision from which the amount due arises;
  - d. the costs of the demand and of the writ of execution;
  - e. that it may be enforced for the account of the violator.
5. For a period of six weeks after the date of service, an objection may be lodged against the writ of execution; the objection shall suspend the enforcement.

#### Article 108

1. For reasons of protecting the financial system and preventing money laundering and terrorist financing, the Bank shall be authorized to publish the violation for which the a penalty charge order or the administrative fine was imposed, the provision violated, as well as the name, address and domicile of the person on whom the administrative fine was imposed.
2. The Minister may lay down rules concerning the exercise of the power referred to in the first paragraph.
3. The decision to publish shall enter into effect on the date on which the violation has been published, without suspending the effect for the duration of the appeal period or, if an appeal has been lodged, of the appeal, if no address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.



## Article 109

1. Having regard to the interests this State Ordinance seeks to protect, the Bank may issue a public warning in case of violation of any prohibitory provision of this State Ordinance, if necessary, stating the considerations that led to the warning.
2. The Minister may lay down rules concerning the exercise of the power as referred to in the first paragraph.
3. The decision to issue a public warning shall enter into effect on the date on which the public warning has been published, without suspending the effect for the duration of the appeal period or, if an appeal has been lodged, of the appeal, if no address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.

## Article 110

1. If the Bank intends to issue a public warning, it shall notify the person concerned in writing of the intended decision and shall give him the opportunity to express his views.
2. The Bank may decide not to apply the first paragraph, if the urgency of the matter dictates otherwise, or if no address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.

## CHAPTER 9

### Penal provision

## Article 111

1. Violation of the provisions laid down by or pursuant to Articles 4, first and second paragraph, 5, fifth paragraph, 6, second paragraph, 7, first paragraph, 8, fourth paragraph, 9, 10, second paragraph, 13, first paragraph, 16, 17, 18, first and second paragraph, 19, 20, first and third paragraph, 21 through 31, 32, first and third paragraph, 33 through 39, 40, first paragraph, 41 through 43, 46 through 52, 53, first paragraph, 54 through 56, 58 through 59, 60, second sentence, 61, first paragraph, 63, 64, 65, first through third paragraph, 66, 67, 68, first paragraph, 70 through 74, 75, first and second paragraph, 76, 77, 78, first paragraph, 79, first and third paragraph, 80, first paragraph, 81, first paragraph, 82, first paragraph, 83, first and second paragraph, 85, 86, 87, first paragraph, 90, third and fourth paragraph, 93, sixth paragraph, 95, and 97, third and fourth paragraph, subparagraph a, insofar as intentionally committed, shall be punished either with imprisonment not exceeding six years or with a fine of the sixth category, or with both punishments.
2. Violation of the provisions laid down by or pursuant to the Articles mentioned in the first paragraph, insofar as not intentionally

committed, shall be punished either with imprisonment not exceeding one year or with a fine of the sixth category, or with both punishments.

3. The violations referred to in the first paragraph shall be serious offenses; the violations referred to in the second paragraph shall be minor offenses.

## CHAPTER 10

### Special provisions

#### Article 112

Each year before July 1 and with due observance of Article 88, the Bank shall issue a report to the Minister on the implementation of this State Ordinance.

#### Article 113

By state decree, a representative organization can be designated, which shall represent a group of securities brokers, asset managers, investment institutions or holders of a stock exchange indicated therein, in connection with the implementation of this State Ordinance.

#### Article 114

Cost associated with the implementation of this State Ordinance can be recovered entirely or partly from certain groups of securities brokers, asset managers, investment institutions, managers or holders of a stock exchange by state decree containing general administrative orders, having heard the Bank and the representative organizations.

#### Article 115

Having heard the Bank, further rules concerning the implementation of this State Ordinance may be laid down by state decree containing general administrative orders.

## CHAPTER 11

### Transitional and final provisions

#### § 1. Transitional law

#### Article 116

1. An enterprise or institution that performs activities falling under the scope of this State Ordinance on the date of entry into force of

this State Ordinance may file an application for being granted a license with due observance of the applicable requirements with the Bank within one year after this date.

2. During one year after the date of entry into force of this State Ordinance, Article 9 shall not apply to enterprises or institutions as referred to in the first paragraph. Furthermore, Article 9 shall not apply to enterprises or institutions as referred to in the first paragraph, which filed an application with the Bank in accordance with the first paragraph, until the moment at which the Bank has decided on the application.
3. Notwithstanding Article 5, third paragraph, the Bank shall decide on an application as referred to in the first paragraph within six months after the date of receipt. If the Bank has requested further information, this period shall take effect as of the date of receipt of this further information.
4. Credit institutions and insurers as referred to in Article 10, first paragraph, which act as a securities broker or asset manager on the date of entry into force of this State Ordinance, shall comply with the obligation to notify as referred to in Article 10, second paragraph, within three months after the entry into effect of this State Ordinance.
5. Any person that disposes of a capital interest as referred to in Article 85, first paragraph, or voting rights as referred to in Article 85, second paragraph, on the date of entry into force of this State Ordinance shall notify the Bank thereof in writing within 3 months after the entry into force of this State Ordinance.

## § 2. Adjustment existing legislation

### Article 117

The State Ordinance on the Supervision of the Credit System (AB 1998 No. 16) shall be amended as follows:

- A in Article 1, first paragraph, the description of the term “accountant” shall read:
  - a person who is not employed by the enterprise or institution, and who is a registered accountant or an accounting consultant as regards whom an entry has been made as referred to in Article 36, second paragraph, subparagraph i, of the Dutch Accountancy Profession Act (“Stb.” [*Bulletin of Acts and Decrees*] 2012, 680).
- B the words “electronic money institutions” in Article 6, third paragraph, Article 11, first paragraph, subparagraphs a through e, and fifth paragraph, shall each time be replaced by: electronic money institution.
- C the following amendments shall be introduced to Article 9:

1. the figure “1”, followed by a period, shall be placed before the text of the Article.
2. a second paragraph shall be added, reading:
  2. Within thirteen weeks after receipt of a complete application, the Bank shall decide on that application. If the Bank has requested further information, this period shall commence after the date of receipt of this further information.

D after the phrase “The Bank may [...] a credit institution” in Article 13, fourth paragraph, the words: and an electronic institution shall be inserted.

E two new Articles shall be inserted after Article 15, reading:

#### Article 15a

1. A credit institution or electronic money institution shall pursue an adequate policy for sound corporate governance and shall set up its corporate governance structure in such a way that sound corporate governance is guaranteed.
2. The policy and structure as referred to in the first paragraph shall in any case deal with:
  - a. the recording and performance of the duties, responsibilities and the working method of the management board and the board of supervisory directors;
  - b. the suitability, both individually and collectively, of the directors and supervisory directors;
  - c. the adoption and implementation of a clear strategy and objectives;
  - d. the adoption, implementation, monitoring and, where necessary, adjustment of the overall risk policy;
  - e. the systematic control of the management of the risks associated with the business activities;
  - f. the adequate provision of information to the management board and the board of supervisory directors;
  - g. a careful and sound decision-making;
  - h. the remuneration of the directors and supervisory directors;
  - i. the independence of the supervisory directors;
  - j. the role and responsibilities of the shareholders of the company.
3. The Bank may give credit institutions and electronic money institutions directives with regard to the policy and the structure as referred to in the first paragraph.

#### Article 15b

1. A credit institution or electronic money institution shall dispose of written procedures for the careful and consistent handling of complaints within a reasonable period.

2. The Bank may give credit institutions or electronic money institutions directives with regard to the first paragraph.
- F after the word “and” in Article 16, first paragraph, subparagraph c, the word: or shall be inserted.
- G the following amendments shall be introduced to Article 20:
1. the phrase “not or not sufficiently [...] 19 and 19b of this State Ordinance” in Article 20, first paragraph, shall be replaced by the phrase: not or not sufficiently [...] 15a, 15b, 19 and 19b of this State Ordinance.
  2. a fifth paragraph shall be added, reading:
    5. The costs and remuneration of the persons designated by the Bank pursuant to this Article shall be paid by the credit institution or electronic credit institution in question.
- H the words “electronic money institution” in Article 22, third paragraph, shall be replaced by: electronic money institution [*not applicable in English*].
- I the phrase “15, first paragraph, 16” in Article 35a, first paragraph, shall be replaced by the phrase: 15, first paragraph 15a, 15b, 16, and the phrase “35, third through sixth paragraph” shall be replaced by: 35, third through fifth paragraph.
- J Article 35g, third and fourth paragraph, shall read:
3. The right to institute criminal proceedings shall lapse, if an administrative fine was already imposed on the person concerned for the same violation.
  4. The Bank and the Public Prosecution Service shall consult periodically on the choice between imposing an administrative fine or criminal-law sanction to avoid unlawful concurrence of those sanctions.
- K two new Articles shall be inserted after Article 35j, reading:

#### Article 35k

1. Having regard to the interests this State Ordinance seeks to protect, the Bank may issue a public warning in case of violation of any prohibitory provision of this State Ordinance, if necessary, stating the considerations that led to the warning.
2. The Minister may lay down rules concerning the exercise of the power as referred to in the first paragraph.
3. The decision to issue a public warning shall enter into effect on the date on which the public warning has been published, without suspending the effect for the duration of the appeal period or, if an appeal has been lodged, of the appeal, if no

address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.

#### Article 351

1. If the Bank intends to issue a public warning, it shall notify the person concerned in writing of the intended decision and shall give him the opportunity to express his views.
2. The Bank may decide not to apply the first paragraph, if the urgency of the matter dictates otherwise, or if no address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.

L Article 48, fourth paragraph, shall read:

4. Within thirteen weeks after receipt of a complete application, the Bank shall decide on that application. If the Bank has requested further information, this period shall commence after the date of receipt of this further information.

M the phrase “not [...] as a credit institution” in Article 49, first paragraph, shall be replaced by: not [...] as a credit institution and electronic money institution.

N the second word “or” in Article 52, third paragraph, subparagraph b, shall be deleted.

O the phrase “15, first paragraph, 16” in Article 53, first paragraph, shall be replaced by the phrase: 15, first paragraph, 15a, 15b, 16.

#### Article 118

The State Ordinance on the Supervision of the Insurance Industry (AB 2000 No. 82) shall be amended as follows:

A A in Article 1, first paragraph, the description of the term “accountant” shall read:

a person who is not employed by the enterprise or institution, and who is a registered accountant or an accounting consultant as regards whom an entry has been made as referred to in Article 36, second paragraph, subparagraph i, of the Dutch Accountancy Profession Act (“Stb.” [*Bulletin of Acts and Decrees*] 2012, 680).

B Article 4, third paragraph, shall read:

3. Within thirteen weeks after receipt of a complete application, the Bank shall decide on that application. If the Bank has requested further information, this period shall commence after the date of receipt of this further information.

- C the following amendments shall be introduced to Article 7:
1. the word “not” in subparagraph c shall be deleted.
  2. the word “insufficient” in subparagraph d shall be replaced by: sufficient.
  3. the word “not” in subparagraph e shall be deleted, and the word: not shall be inserted after the third word “applicant [...]”.
  4. the comma after “Article 14” in subparagraph i shall be deleted, and the words “third paragraph” shall be deleted.

- D after the second word “combating” in Article 8, second paragraph, subparagraph e, the word: of shall be inserted, and the word “regulations” shall be replaced by: rules.

- E two new Articles shall be inserted after Article 10, reading:  
Article 10a

1. An insurer shall pursue an adequate policy for sound corporate governance and shall set up its corporate governance structure in such a way that sound corporate governance is guaranteed.
2. The policy and structure as referred to in the first paragraph shall in any case deal with:
  - a. the recording and performance of the duties, responsibilities and the working method of the management board and the board of supervisory directors;
  - b. the suitability, both individually and collectively, of the directors and supervisory directors;
  - c. the adoption and implementation of a clear strategy and objectives;
  - d. the adoption, implementation, monitoring and, where necessary, adjustment of the overall risk policy;
  - e. the systematic control of the management of the risks associated with the business activities;
  - f. the adequate provision of information to the management board and the board of supervisory directors;
  - g. a careful and sound decision-making;
  - h. the remuneration of the directors and supervisory directors;
  - i. the independence of the supervisory directors;
  - j. the role and responsibilities of the shareholders of the company.
3. The Bank may give insurers directives with regard to the policy and the structure as referred to in the first paragraph.

Article 10b

1. An insurer shall dispose of written procedures for the careful and consistent handling of complaints within a reasonable period.
2. The Bank may give insurers directives with regard to the first paragraph.

- F Article 14d shall be amended as follows:
1. after the second word “combating” in the second paragraph, subparagraph c, the word: of shall be inserted.
  2. the figure “5” in the third paragraph, subparagraph b, shall be replaced by 6.
- G Article 15, sixth paragraph, shall read:
6. The costs and remuneration of the persons designated by the Bank pursuant to this Article shall be paid by the insurer in question.
- H the phrase “10, 11 through 15b” in Article 16, first paragraph, shall be replaced by the phrase: 10 through 15b.
- I Article 16f, third and fourth paragraph, shall read:
3. The right to institute criminal proceedings shall lapse, if an administrative fine was already imposed on the person concerned for the same violation.
  4. The Bank and the Public Prosecution Service shall consult periodically on the choice between imposing an administrative fine or criminal-law sanction to avoid unlawful concurrence of those sanctions.
- J two new Articles shall be inserted after Article 16i, reading:  
Article 16j
1. Having regard to the interests this State Ordinance seeks to protect, the Bank may issue a public warning in case of violation of any prohibitory provision of this State Ordinance, if necessary, stating the considerations that led to the warning.
  2. The Minister may lay down rules concerning the exercise of the power as referred to in the first paragraph.
  3. The decision to issue a public warning shall enter into effect on the date on which the public warning has been published, without suspending the effect for the duration of the appeal period or, if an appeal has been lodged, of the appeal, if no address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.
- Article 16k
1. If the Bank intends to issue a public warning, it shall notify the person concerned in writing of the intended decision and shall give him the opportunity to express his views.
  2. The Bank may decide not to apply the first paragraph, if the urgency of the matter dictates otherwise, or if no address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.
- K the following amendments shall be introduced to Article 17:



1. the figure “1”, followed by a period, shall be placed before the text of the Article.
  2. a new second paragraph shall be added, reading:
    2. Within thirteen weeks after receipt of a complete application, the Bank shall decide on that application. If the Bank has requested further information, this period shall commence after the date of receipt of this further information.
- M the phrase “10, 11 through 15b” in Article 26, first paragraph, shall be replaced by the phrase: 10 through 15b.

#### Article 119

The State Ordinance on the Supervision of Money Transfer Companies (AB 2003 No. 60) shall be amended as follows:

- A the following amendments shall be introduced to Article 5:
1. the last sentence in the third paragraph shall be deleted.
  2. a new fourth paragraph shall be inserted, and the fourth paragraph shall be renumbered to the fifth paragraph, reading:
    4. Within thirteen weeks after receipt of a complete application, the Bank shall decide on that application. If the Bank has requested further information, this period shall commence after the date of receipt of this further information.
  3. “fourth paragraph” in the fifth paragraph shall be replaced by “third paragraph”.
- B the phrase “Article 4, first paragraph” in Article 10, second paragraph, shall be replaced by the phrase: Article 4, first, second and third paragraph.
- C Article 26, third and fourth paragraph, shall read:
3. The right to institute criminal proceedings shall lapse, if an administrative fine was already imposed on the person concerned for the same violation.
  4. The Bank and the Public Prosecution Service shall consult periodically on the choice between imposing an administrative fine or criminal-law sanction to avoid unlawful concurrence of those sanctions.
- D two new Articles shall be inserted after Article 28, reading:
- Article 28a
1. Having regard to the interests this State Ordinance seeks to protect, the Bank may issue a public warning in case of violation of any prohibitory provision of this State Ordinance, if necessary, stating the considerations that led to the warning.

2. The Minister may lay down rules concerning the exercise of the power as referred to in the first paragraph.
3. The decision to issue a public warning shall enter into effect on the date on which the public warning has been published, without suspending the effect for the duration of the appeal period or, if an appeal has been lodged, of the appeal, if no address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.

#### Article 28b

1. If the Bank intends to issue a public warning, it shall notify the person concerned in writing of the intended decision and shall give him the opportunity to express his views.
2. The Bank may decide not to apply the first paragraph, if the urgency of the matter dictates otherwise, or if no address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.

#### Article 120

The State Ordinance on the Supervision of Trust Offices (AB 2009 No. 13) shall be amended as follows:

- A after the second word “combating” in Articles 6, second paragraph, subparagraph c, and 17, first paragraph, subparagraph a, the word: of shall be inserted.
- B the third through sixth paragraph in Article 13 shall be deleted.
- C a new Article 13a shall be inserted after Article 13, reading:  
Article 13a
  1. If a forfeited penalty or fine has not been paid within the period set by the Bank, the violator shall be demanded in writing to pay the amount of the penalty or the fine as yet within two weeks, increased by the costs of the demand.
  2. In the absence of payment, the amount and the costs as referred to in the first paragraph, shall be increased by the collection costs, collected by the Bank by way of a writ of execution.
  3. The writ of execution shall be published by serving a process as referred to in the Code of Civil Procedure of Aruba and shall constitute entitlement to enforcement, which may be enforced while applying the provisions of this Code.
  4. The writ of execution shall in any case state:
    - a. the words “writ of execution” in the heading;
    - b. the amount of the collectable principal sum, increased by the statutory interest due;

- c. the decision or the statutory provision from which the amount due arises;
  - d. the costs of the demand and of the writ of execution;
  - e. that it may be enforced for the account of the violator.
5. For a period of six weeks after the date of service, an objection may be lodged against the writ of execution; the objection shall suspend the enforcement.

D Article 14, third and fourth paragraph, shall read:

3. The right to institute criminal proceedings shall lapse, if an administrative fine was already imposed on the person concerned for the same violation.
4. The Bank and the Public Prosecution Service shall consult periodically on the choice between imposing an administrative fine or criminal-law sanction to avoid unlawful concurrence of those sanctions.

E two new Articles shall be inserted after Article 16, reading:

Article 16a

1. Having regard to the interests this State Ordinance seeks to protect, the Bank may issue a public warning in case of violation of any prohibitory provision of this State Ordinance, if necessary, stating the considerations that led to the warning.
2. The Minister may lay down rules concerning the exercise of the power as referred to in the first paragraph.
3. The decision to issue a public warning shall enter into effect on the date on which the public warning has been published, without suspending the effect for the duration of the appeal period or, if an appeal has been lodged, of the appeal, if no address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.

Article 16b

1. If the Bank intends to issue a public warning, it shall notify the person concerned in writing of the intended decision and shall give him the opportunity to express his views.
2. The Bank may decide not to apply the first paragraph, if the urgency of the matter dictates otherwise, or if no address of the person concerned is known, and the address also cannot be obtained by reasonable efforts.

F the phrase “Article 18” in Article 23, first paragraph, shall be replaced by: Article 22.

Article 121

The State Ordinance on the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 No. 28) shall be amended as follows:

A the following amendments shall be introduced to Article 1, first paragraph:

1. the figure “26” in the description of the term “unusual transaction” shall be replaced by: 25.
2. the figure “27” in the description of the term “report” shall be replaced by 26.

B Article 23 shall read:

Article 23

1. For the proper performance of its duties, the Reporting Center shall be authorized to consult all registers and sources, both closed and open, of agencies and officials responsible for the implementation of regulations or the detection and prosecution of criminal offenses.
2. The agencies and officials, referred to in the first paragraph, are obligated to allow the Reporting Center to consult as referred to in the first paragraph. As regards all closed and open digital registers and sources, the agencies and officials mentioned in the first paragraph are obligated to grant the Reporting Center direct and anonymous access.
3. For the purposes of adequate consultation, the head of the Reporting Center may enter into an agreement with the agencies or officials referred to in the first paragraph.

C Article 35, first paragraph, shall read:

Article 35

1. The persons designated for this purpose by the President of the Bank, employed by the Bank, shall be responsible for supervising the compliance with the provisions laid down by or pursuant to this State Ordinance. Such a designation shall be published in the Official Gazette of Aruba.

D Article 41, fourth paragraph, shall read:

4. The Bank and the Public Prosecution Service shall consult periodically on the choice between imposing an administrative fine or criminal-law sanction to avoid unlawful concurrence of those sanctions.

Article 122

The State Ordinance on Company Pension Funds (AB 1998 No. GT 17) shall be amended as follows:

A a new Article shall be inserted after Article 12, reading:

## Article 12a

1. If, in the opinion of the Bank, an accountant does not offer or no longer offers the guarantees necessary that he will be able to properly perform his duties as regards a company pension fund, the Bank may decide as regards this accountant that he is no longer authorized to issue the opinions referred to in this State Ordinance concerning that company pension fund.
2. The Bank shall promptly inform the company pension fund in question of a decision as referred to in the first paragraph.

B Article 20, first paragraph, shall read:  
Article 20

1. The persons designated for this purpose by the President of the Bank, employed by the Bank, shall be responsible for supervising the compliance with the provisions laid down by or pursuant to this State Ordinance. Such a designation shall be published in the Official Gazette of Aruba.

## § 3. Final provisions

### Article 123

As of the date of entry into force of this State Ordinance:

- a. the policy paper “IV Sound Corporate Governance Practices”, issued pursuant to Article 15, first paragraph, of the State Ordinance on the Supervision of the Credit System, shall apply to Article 10a, third paragraph, of the State Ordinance on the Supervision of the Credit System;
- b. the policy paper “III.1 Sound Corporate Governance Practices for Insurance Companies”, issued pursuant to Article 10, first paragraph, of the State Ordinance on the Supervision of the Insurance Industry, shall apply to Article 15a, third paragraph, of the State Ordinance on the Supervision of the Insurance Industry.

### Article 124

Credit institutions, electronic money institutions and insurers disposing of a license as referred to in Article 4 of the State Ordinance on the Supervision of the Credit System and Article 5, first paragraph, of the State Ordinance on the Supervision of the Insurance Industry, respectively, at the time of entry into force of this State Ordinance shall adjust their policy and corporate governance structure, if necessary, within six months after the date of entry into force of this State Ordinance, in such a way that they comply with the Articles of the State Ordinance on the Supervision of the Credit System and the State Ordinance on the Supervision of the Insurance Industry, which have

been amended or newly inserted, respectively, by means of Articles 117 and 118.

#### Article 125

1. The State Decree on Qualified Holding Insurance Industry (AB 2003 No. 11) shall be repealed.
2. As of the date of entry into force of this State Ordinance, a written permission given pursuant to Article 1, first paragraph, of the State Decree on Qualified Holding Insurance Industry shall be considered a permission as referred to in Article 14a of the State Ordinance on the Supervision of the Insurance Industry.

#### Article 126

1. This State Ordinance shall enter into force on a date to be determined by state decree, except for Article 121, parts A and B, which shall enter into force as of the date following the date of its publication in the Official Gazette of Aruba, and which shall have retroactive effect to June 1, 2011.
2. It may be cited as State Ordinance on the Supervision of Securities Transactions.

Given in Oranjestad,

The Minister of Finance and Government Organization,

The Minister of Justice,

The Minister of General Affairs, Science, Innovation and Sustainable Development,

The Minister of Economic Affairs, Communication, Energy and the Environment,

The Minister of Social Affairs, Youth and Labor,