

# AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

## INVESTMENT FUNDS AMENDMENT ACT 2016

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### SCHEDULE

WHEREAS it is expedient to enhance the powers of the Bermuda Monetary Authority under the Investment Funds Act 2006 to effectively regulate the investment fund industry in Bermuda and to meet appropriate international standards by means of the imposition of civil penalties, the making of prohibition orders and other disciplinary measures including injunctive relief; and to provide for matters connected to the foregoing:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

## INVESTMENT FUNDS AMENDMENT ACT 2016

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### Citation

1 This Act, which amends the Investment Funds Act 2006 (the “principal Act”), may be cited as the Investment Funds Amendment Act 2016.

### Amends section 2

2 The principal Act is amended in section 2 by inserting in the appropriate alphabetical order the following new definitions—

“decision notice” means a notice prepared in accordance with section 67K;

“warning notice” means a notice prepared in accordance with section 67J.”.

### Inserts section 2B

3 The principal Act is amended by inserting, after section 2A, the following section —

#### “Authority’s statement of principles

2B (1) The Authority shall as soon as practicable after the coming into force of this section, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

- (a) in exercising its powers to grant or revoke an authorisation under Part II;
- (b) in interpreting the minimum criteria;
- (c) in exercising its powers to—
  - (i) grant, revoke or restrict a licence under Part III;
  - (ii) obtain information and to require the production of documents;
  - (iii) issue directions under section 30 and 51;
  - (iv) impose a civil penalty under section 67A;
  - (v) publish a statement in respect of an authorised fund or fund administrator pursuant to section 67C;
  - (vi) make a prohibition order under section 67E; and
  - (vii) publish information about any matter to which a decision notice relates under section 67M.

(2) If the Authority makes a material change to the statement of principles, it shall publish a statement of the change or the revised statement of principles in the same manner as it published under subsection (1).”.

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Amends section 26

4 The principal Act is amended in section 26(1)(b)(i) by inserting after the word “statement” the words “in such form as the Authority may direct” .

Repeals and replaces section 31

5 The principal Act is amended by repealing section 31 and substituting the following—

“Notice of direction

31 (1) If the Authority proposes to give a direction under section 30, it must give the operator of a fund a warning notice.

(2) If the Authority decides to give a direction under section 30, it must give the operator of the fund a decision notice.”.

Inserts section 31A

6 The principal Act is amended by inserting the following new section after section 31—

“Directions in cases of urgency - authorised fund

31A (1) No notice need be given under section 31 in respect of the giving of a direction in any case in which the Authority considers that the direction should be given as a matter of urgency.

(2) In any such case, the Authority may by written notice to the operator of the fund impose a direction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (4) and section 55.

(4) The operator of a fund to which a notice is given under this section of the giving of a direction may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Authority.

(5) After giving a notice under subsection (2), giving a direction and taking into account any representations made in accordance with subsection (4), the Authority shall decide whether—

(a) to confirm its original decision; or

(b) to vary the direction.

(6) The Authority shall, within the period of 28 days beginning with the day on which the notice was given under subsection (2), give the operator of the fund concerned written notice of its decision under subsection (5) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

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(7) Where the notice under subsection (6) is of a decision to take the action specified in subsection (5)(b), the notice under subsection (6) shall have the effect of varying the direction with effect from the date on which it is given.”.

Repeals sections 34 and 35

7 The principal Act is amended by repealing sections 34 and 35.

Repeals and replaces section 47

8 The principal Act is amended in by repealing section 47 and substituting the following—

“Statement of compliance

47 (1) A licensed fund administrator shall, within four months from the end of its financial year, submit to the Authority—

- (a) a statement confirming that it has complied with the requirements of this Part; or
- (b) a statement setting out the particulars of the breach, where it has failed to comply with the requirement, of this Part, .

with respect to the preceding financial year.

(2) Every licensed fund administrator that fails to submit a statement to the Authority as required by subsection (1) within the time specified therein shall be liable to a civil penalty not exceeding \$5,000 for every week or part of a week that it is in default.”.

Repeals and replaces section 48

9 The principal Act is amended by repealing section 48 and substituting the following—

“Offences

48 A licensed fund administrator that holds client monies or other client assets in breach of the condition of its licence imposed by virtue of section 43(3) is guilty of an offence and liable on summary conviction to a fine of \$10,000.”.

Inserts section 51A

10 The principal Act is amended by inserting after section 51 the following new section—

“Directions in cases of urgency - fund administrator

51A (1) No notice need be given under section 51 in respect of the giving of a direction in any case in which the Authority considers that the direction should be given as a matter of urgency.

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(2) In any such case, the Authority may by written notice to the fund administrator impose a direction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (4) and section 55.

(4) A fund administrator to which a notice is given under this section of the giving of a direction may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Authority.

(5) After giving a notice under subsection (2) giving a direction and taking into account any representations made in accordance with subsection (4), the Authority shall decide whether—

- (a) to confirm its original decision; or
- (b) to vary the direction.

(6) The Authority shall, within the period of 28 days beginning with the day on which the notice was given under subsection (2), give the fund administrator concerned written notice of its decision under subsection (5) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

(7) Where the notice under subsection (6) is of a decision to take the action specified in subsection (5)(b), the notice under subsection (6) shall have the effect of varying the direction with effect from the date on which it is given.”.

Repeals and replaces section 53

11 The principal Act is amended by repealing section 53 and substituting the following—

“Notice of direction or revocation of licence

53 (1) If the Authority proposes to issue a direction or revoke a license under section 52, it must give the fund administrator a warning notice.

(2) If the Authority decides to issue a direction or revoke a license under section 52, it must give the fund administrator a decision notice.”.

Amends section 55

12 The principal Act is amended in section 55—

(a) in subsection (1), by inserting after paragraph (e) the following new paragraphs—

“(f) to publish a statement in respect of an operator under section 67C;

(g) to impose a civil penalty against a person concerned under section 67A,”;

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(b) in subsection (3), by inserting after paragraph (b) the following new paragraphs—

“(c) by the decision of the Authority to impose a civil penalty on it under section 67A;

(d) by the decision of the Authority to publish a statement under section 67C.”;

(c) by inserting after subsection (3) the following new subsections—

“(3A) Any person in respect of whom a prohibition order has been made under section 67E may appeal to the Tribunal against the decision.

(3B) Any person in respect of whom a decision notice has been issued refusing to revoke or vary a prohibition order may appeal to the Tribunal.”;

(d) by repealing subsection (5) and substituting the following—

“(5) The Tribunal may suspend the operation of the decision appealed against pending the determination of an appeal in respect of the decision.”.

Amends section 64

13 The principal Act is amended in section 64—

(a) in subsection (4)(a), by deleting the words “all documents relating to the person concerned” and substituting the words “such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation”

(b) in subsection (4)(b), by inserting after the word “require” the words “and answer such questions relevant to the investigation as the persons appointed under subsection (1) may require”; and

(c) by inserting after subsection (6) the following new subsection —

“(6A) Unless the Authority otherwise directs, the person under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.”.

Inserts section 64A

14 The principal Act is amended by inserting after section 64 the following new section—

“Investigations of suspected contraventions

64A (1) The Authority may conduct an investigation if it appears to the Authority that—

(a) a person may have contravened section 5 or section 41;

(b) an excluded fund may not qualify for exclusion under section 6;

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- (c) an exempted fund may have failed to satisfy the criterion of exemption required by section 9;
  - (d) the operator of an authorised fund, a service provider or a fund administrator may have failed to comply with any requirements or contravened any prohibition imposed by or under this Act or rules made by the Authority under section 37;
  - (e) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 67E.
- (2) The power conferred by subsection (1)(d) may be exercised in relation to a former authorised fund or, as the case may be, fund administrator, but only in relation to—
- (a) business carried on at any time when the fund or fund administrator was authorised or licensed, as the case may be, under this Act; or
  - (b) the ownership or control of a fund or fund administrator at any time when it was authorised or licensed under this Act, as the case may be.
- (3) In this section, “regulated activity” has the meaning given in section 67E.”.

Amends section 65

15 The principal Act is amended in section 65—

- (a) by deleting the section heading and substituting the following—

“Power to require production of documents”;

- (b) by repealing subsection (1) and substituting the following—

“(1) The Authority may by notice in writing require the person who is the subject of an investigation under section 64A (“the person under investigation”) or any person connected with the person under investigation—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of the investigation;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;

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(c) to attend at such place and time as may be specified in the notice and answer questions relevant to the investigation as the Authority may require.”;

(c) by inserting after subsection (1) the following new subsection—

“(1A) The Authority may by notice in writing require every person who is or was a director, controller, partner, senior executive, officer, employee, agent, banker, auditor, accountant, service provider or barrister and attorney of an authorised fund or licensed fund administrator which is under investigation by virtue of subsection (1)—

(a) to produce to the Authority, within such time and at such place as the Authority may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation and which are in his custody or power;

(b) to attend before the Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and

(c) to take such actions as the Authority may direct in connection with the investigation.”;

(d) by inserting after subsection (6) the following new subsection—

“(7) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—

(a) a member of the group of the person under investigation;

(b) a controller of the person under investigation;

(c) a partner of a partnership of which the person under investigation is a member.”.

Amends section 66

16 The principal Act is amended in section 66—

(a) by repealing subsection (1) and substituting the following—

“(1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under section 64A—

(a) that a person has failed to comply with a notice served on him under section 65;

(b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or

- (c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.”;
- (b) in subsection (4), by repealing subparagraph (b) and substituting the following—
  - “(b) until the conclusion of proceedings if, within the period of three months referred to in paragraph (a) proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 65(1).”.

Inserts Parts VA, VB and sections 67A to 67M

17 The principal Act is amended by inserting after section 67 the following new Parts—

“PART VA

DISCIPLINARY MEASURES

Power to impose civil penalties for breach of requirements

67A (1) Except as provided in sections 9A, 17 and 45, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a civil penalty not exceeding \$500,000, as the Authority considers appropriate, for each such failure or contravention.

(2) For the purposes of subsection (1), “appropriate” means effective, proportionate and dissuasive.

(3) The Authority shall not impose a civil penalty where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

Civil penalties procedure

67B (1) If the Authority proposes to impose a civil penalty, it must give the person concerned a warning notice.

(2) If the Authority decides to impose a civil penalty, it must give the person concerned a decision notice.

Public censure

67C (1) If the Authority considers that the fund operator or a fund administrator has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

(2) After a statement under this section is published, the Authority shall send a copy of it to the operator of the fund or, as the case may be, the fund administrator.

Public censure procedure

67D (1) If the Authority proposes to publish a statement in respect of a fund operator or, as the case may be, a fund administrator under section 67C, it must give the operator of the fund or, as the case may be, the fund administrator, a warning notice.

(2) If the Authority decides to publish a statement under section 67C (whether or not in the terms proposed), it must give the operator of the fund or, as the case may be, the fund administrator a decision notice, which shall set out the terms of the statement.

Prohibition orders

67E (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by the operator of a fund, a person who is licensed by the Authority under this Act or a person performing functions in relation to the activities of a service provider ('a regulated person').

(2) The Authority may make a prohibition order prohibiting the individual from performing a specified function, any function falling within a specified description, or any function.

(3) A prohibition order may relate to—

- (a) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities;
- (b) regulated persons generally, or any person within a specified class of regulated persons.

(4) In exercising its discretion to make a prohibition order under subsection (2), the Authority must have regard (among other things) to such factors, including assessment criteria, as the Authority may establish in a statement of principles.

(5) An operator of a fund and a fund administrator must ensure that no function performed in relation to the carrying on of a regulated activity, is performed by an individual who is prohibited from performing that function by a prohibition order.

(6) The Authority may, on the application of the individual named in a prohibition order, revoke or vary the prohibition order.

(7) The Authority must publish a prohibition order that is in effect, and every variation of such order, in such manner as it considers appropriate to bring the order to the attention of the public.

(8) This section applies to the performance of functions in relation to a regulated activity carried on by a person who is an exempted person in relation to that activity as it applies to the performance of functions in relation to a regulated activity carried on by a regulated person.

(9) Any person who fails to comply with the terms of a prohibition order commits an offence and is liable—

(a) on summary conviction, to a fine of \$50,000 or to imprisonment for two years or to both;

(b) on conviction on indictment, to a fine of \$200,000 or to imprisonment for four years or to both.

(10) In this section—

“exempted person” means a person who is exempt from the requirement to be authorised by or under any of the provisions of this Act;

“regulated activity” means any activity that is carried on by way of business requiring licensing or other authority by the Authority under any provision of this Act;

“regulated person” has the meaning given in subsection (1);

“specified” means specified in the prohibition order.

Prohibition Orders: procedure

67F (1) If the Authority proposes to make a prohibition order, it must give the individual concerned a warning notice.

(2) If the Authority decides to make a prohibition order, it must give the individual concerned a decision notice.

Applications relating to prohibition orders: procedures

67G (1) This section applies to an application for the revocation or variation of a prohibition order.

(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(3) If the Authority decides to refuse the application, it must give the applicant a decision notice.

Determination of applications for variation etc.

67H (1) The Authority may grant an application made under section 67G if it is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the applicant—

(a) has obtained a qualification;

(b) has undergone, or is undergoing, training; or

(c) possesses a level of competence,

required in relation to persons performing functions of the kind to which the application relates.

*Injunctions*

**Injunctions**

67I (1) If, on the application of the Authority, the Supreme Court (the "Court") is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
- (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

(2) If, on the application of the Authority, the Court is satisfied—

- (a) that any person has contravened a relevant requirement; and
- (b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Authority, the Court is satisfied that any person may have—

- (a) contravened a relevant requirement; or
- (b) been knowingly concerned in the contravention of such a requirement,

the Court may make an order restraining such person from disposing of, or otherwise dealing with, any of his assets which it is satisfied the person is reasonably likely to dispose of or otherwise deal with.

(4) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(5) "Relevant requirement", in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

PART VB  
NOTICES

Warning notices

67J (1) A warning notice must—

- (a) state the action which the Authority proposes to take;
- (b) be in writing; and
- (c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Authority and, where such representations are made, the Authority shall take them into account in deciding whether to give a decision notice.

(3) The Authority may extend the period specified in the notice.

(4) A warning notice given under section 31 must specify the proposed terms of the direction or, as the case may be, a variation and, where the direction imposes a requirement under section 30(4)(b), must also specify that the requirement has effect until a specified date or a further direction.

(5) A warning notice given for purposes of section 51 must specify the proposed terms of the direction or, as the case may be, a variation.

(6) A warning notice about a proposal to publish a statement under section 67D must set out the terms of the statement.

(7) A warning notice given under section 67F must set out the terms of the prohibition.

Decision notices

67K (1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Authority's decision to take the action to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the Tribunal under section 55.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 67J was given and, if no decision notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 67L.

(3) A decision notice about the giving of a direction or variation under section 30 must set out the terms of the direction or variation.

(4) A decision notice about the giving of a direction under section 51 must set out the terms of the direction.

(5) A decision notice about the imposition of a civil penalty under section 67A must state the date of payment.

(6) A decision notice about public censure under section 67C must—

- (a) set out the terms of the statement;
- (b) give details of the manner in which, and the date on which, the statement will be published.

(7) A decision notice about a prohibition order made under section 67F must—

- (a) name the individual to whom the prohibition order applies;
- (b) set out the terms of the order; and
- (c) be given to the individual named in the order.

(8) A decision notice shall state the day on which it is to take effect.

(9) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(10) The Authority may give a further decision notice as a result of subsection (9) only if the person to whom the original notice was given consents.

(11) If the person to whom a decision notice is given under subsection (1) had the right to refer the matter to which the original decision notice related to the Tribunal, he has that right as respects the decision notice under subsection (9).

#### *Conclusion of actions*

##### Notices of discontinuance

67L (1) Subject to section 67K(2), if the Authority decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the action which is being discontinued.

#### *Publication*

##### Publication

67M (1) Subject to sections 67C and 67E, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.

(2) The Authority must not publish a decision under subsection (1)—

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- (a) before notifying the person concerned; and
- (b) pending an appeal under section 55.”.

### Inserts section 73A

18 The principal Act is amended by inserting, after section 73, the following new section —

#### “Criminal conviction or civil penalties

73A (1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 67A in relation to the same matter.

(2) When a person is liable to a civil penalty imposed by or under section 67A, such person shall not also be charged with an offence under this Act in relation to the same matter.

(3) A civil penalty levied pursuant to this Act may be recovered by the Authority as a civil debt.”.

### Consequential amendments

19 The Schedule, which makes consequential amendments to the principal Act, has effect.

### Transitional - Investment Funds Amendment Act 2013

20 The Investment Funds Amendment Act 2013 is amended in section 13(2) by deleting the word “third” and substituting the word “fourth”.

### Commencement

21 (1) Subject to subsection (2), this Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette and the Minister may appoint different days for different provisions.

(2) Section 20 of this Act shall come into operation on assent.

SCHEDULE

(Section 19)

1. The principal Act is amended by repealing the following provisions—
  - (a) section 25(6);
  - (b) section 26(5);
  - (c) section 45(3);
  - (d) section 48(b), (c), (d), and (e);
  - (e) section 51(4).
  
2. The principal Act is amended in the Schedule “Minimum Criteria for Registration”—
  - (a) in paragraph 1(1), by deleting the words “hold the particular position which he holds or is to hold” and substituting the words “perform functions in relation to any activity carried on by the licensed fund administrator”; and
  - (b) in paragraph 2, by repealing subparagraph (4) and substituting the following—

“(4) In determining whether a licensed fund administrator is conducting its business in a prudent manner, the Authority shall take into account any failure by the licensed fund administrator to comply with the provisions of—

    - (a) this Act;
    - (b) any other law, including provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
    - (c) the code of conduct; and
    - (d) international sanctions in force in Bermuda.”.

## INVESTMENT FUNDS AMENDMENT BILL 2016

### EXPLANATORY MEMORANDUM

This Bill amends the Investment Funds Act 2006 (the principal Act) to enhance the powers of the Bermuda Monetary Authority to effectively regulate the investment fund industry in Bermuda and to meet appropriate international standards by means of the imposition of civil penalties, the making of prohibition orders and other disciplinary measures including injunctive relief; and to provide for the giving of notices and for the publication of decisions in relation to the exercise of disciplinary measures.

Clause 1 provides a citation for the Bill.

Clause 2 amends the principal Act in section 2 to insert and define the terms “warning notice” and “decision notice”. A warning notice, which is fully defined under the new section 67J, shall be given by the Authority where it proposes to impose a civil penalty under the new section 67A. A decision notice, which is fully defined under the new section 67K, shall be given by the Authority where it decides to impose a civil penalty under the new section 67A.

Clause 3 amends the principal Act to insert a new section 2B to make provision for the BMA to issue and publish a statement of principles which sets out the manner in which the BMA will or proposes to act in relation to such matters as: the power to grant or revoke an authorisation; the exercise of its powers in relation to the grant, revocation and restriction of a licence under Part III of the principle Act; obtaining and requiring the production of documents; the issuance of directions in accordance with sections 30 and 51; the imposition of civil penalties under section 67A; the publication of a statement relating to an authorised fund or fund administrator under section 67C; the power to make a prohibition order under section 67E and to publish information about any matter to which a decision notice relates under section 67M.

The BMA is required to also publish a new statement of principles or a statement of change of principles in the same manner in which it published the original statement of principles in the event it proposes to make a material change to the published version.

Clause 4 amends the principal Act in section 26(1)(b)(i) to provide that the statement confirming that the fund has at all times during the preceding year been in compliance with its requirements under the Act etc., shall now be provided in such form as the Authority may prescribe.

Clause 5 amends the principal Act by repealing and replacing the current provisions of section 31 with provision for the issuance of either a warning or decision notice by the Authority where it proposes to or gives a direction under section 30 of the principal Act.

Clause 6 amends the principal Act by inserting a new section 31A to empower the Authority to give directions in the case of urgency, similar to the powers exercised under other regulatory Acts.

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Clause 7 amends the principal Act by repealing sections 34 and 35 as new measures and procedures are proposed to be adopted under the Bill in this regard.

Clause 8 amends the principal Act in section 47 to include a requirement for a licensed fund administrator that fails to submit the relevant statement of compliance or noncompliance under Part III to the Authority to be liable to a civil penalty of \$5,000 for every week or part of a week that it is in default.

Clause 9 amends the principal Act by repealing and replacing the section 48 providing for offences in line with the new disciplinary measures being introduced by the Bill.

Clause 10 amends the principal Act by inserting a new section 51A to provide for the Authority to issue a direction in urgent cases.

Clause 11 amends the principal Act by repealing and replacing section 53 to require that where the Authority proposes or decides to issue a direction to a fund administrator, then the Authority must give that fund administrator a warning notice and a decision notice, as the case may be.

Clause 12 amends the principal Act in section 55 to provide for a licensed fund administrator or an operator of an authorised fund (as the case may be) to appeal against a decision of the Authority taken in relation to the imposition of a disciplinary measure.

Clause 13 amends the principal Act in section 64 to define the documents to be produced to a person appointed to carry out an investigation on behalf of the Authority and to provide for the recovery of costs of an investigation.

Clause 14 amends the principal Act to insert a new section 64A to widen the scope for investigations by the Authority beyond the current scope of investigating non-licensed authorised or exempted business. The new section will provide for investigations with respect to breaches of requirements imposed by or under the Act and investigations into the fitness and propriety of individuals who perform functions relating to a licensed activity. In addition, power is given to investigate investment funds or fund administrators in relation to a business carried on at the time when they were licensed; and investigations in relation to the ownership and control of former investment funds or administrators at a time when they were licensed.

Clause 15 amends the principal Act in section 65 by changing the existing heading to "Power to require production of documents"; making consequential amendments to the section and extending the application of the provisions of the section to any person connected with a person under investigation.

Clause 16 amends the principal Act in section 66 to make consequential amendments in connection with the new provisions on investigation proposed under the amended section 64.

Clause 17 amends the principal Act to insert a new Parts VA "Disciplinary Measures" and VB "Notices" and new sections 67A to 67M. The new provisions will empower the Authority to impose civil penalties for failure by licensed persons to comply with any requirement of or for contravening any prohibition imposed by or under the Act. In determining the appropriate level of penalty, the Authority is required to take into account the provisions requiring that the fine must be effective and proportionate to the breach as

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well as dissuasive. The BMA is precluded from imposing a fine if the BMA is satisfied that the person concerned took all reasonable steps and that they exercised due diligence to ensure compliance.

Clause 18 amends the principal Act to insert a new section 73A to provide a mechanism for the recovery of civil penalties imposed under the Act. Power is given for BMA to recover the amount owing by way of civil proceedings in court. Provision is made requiring that where a person is convicted of a criminal charge, no civil penalties can be imposed relating to the same matter and vice-versa.

Clause 19 makes provision for consequential amendments to the principal Act.

Clause 20 amends the Investment Funds Amendment Act 2013 so as to “grandfather” funds exempted under the repealed section 7 for an additional year in order to give adequate time for relevant Funds to be reclassified under the proposed exempt fund regime.

Clause 21 provides for commencement of the Act by notice published in the Gazette and provides for the appointment of different days for different provisions.