

THE STATUTES OF THE REPUBLIC OF SINGAPORE

FUTURES TRADING ACT
(CHAPTER 116)

Act
14 of 1986

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Futures Trading Act

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An Act to regulate trading in futures contracts and for matters connected therewith.

[15th August 1986]

PART I

PRELIMINARY

1. This Act may be cited as the Futures Trading Act. Short title.
2. In this Act, unless the context otherwise requires —

“auditor” means an approved company auditor as defined in section 4 of the Companies Act;	Inter-pretation. Cap. 50.
“Authority” means the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act;	Cap. 186.
“business rules”, in relation to a body corporate that maintains or proposes to maintain a futures	

market, means the rules, regulations and bye-laws, by whatever name called, governing the activities and conduct of —

- (a) the body corporate and its members;
- (b) its clearing house; and
- (c) other persons in relation to the futures market,

whether those rules, regulations or bye-laws are made by the body corporate or are contained in the Memorandum and Articles of Association of the body corporate or altered or supplemented by the Authority pursuant to section 5 (4);

“clearing house”, in relation to a futures market, means a body corporate, or an association or organisation forming part of a Futures Exchange, that —

- (a) clears and settles futures contracts; and
- (b) makes adjustments to the contractual obligations arising out of those futures contracts;

“commodity” means —

- (a) a financial instrument; and
- (b) gold and such other items, goods, articles, services, rights and interests, which are the subject of futures contracts, as the Authority may by order prescribe;

“corporation” has the same meaning as in the Companies Act;

“customer” means a person on whose account a futures broker carries on trading in futures contracts;

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“director” has the same meaning as in the Companies Act;

“Exchange” or “Futures Exchange” means —

- (a) the Singapore International Monetary Exchange Ltd.; or
- (b) a body corporate —
 - (i) that provides or proposes to provide the physical facilities

necessary for trading in futures contracts; and

- (ii) that maintains or proposes to maintain a futures market that is approved by the Authority under section 4;

“financial instruments” include currencies, interest rate instruments, share indices, a group or groups of share indices and such other financial instruments as the Authority may by order prescribe;

“financial year” has the same meaning as in the Companies Act;

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“floor broker” means an individual who is employed by, or acts for, a futures broker for the purpose of entering into contracts on the floor of a Futures Exchange on behalf of the futures broker;

“futures broker” means a person whether as principal or agent who carries on the business of soliciting, or accepting orders, for the purchase or sale of any commodity under a futures contract on any Exchange or futures market and, who in connection therewith, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee or secure any trades or contracts that may result therefrom whether or not the business is part of, or is carried on in conjunction with, any other business;

“futures broker’s representative” means a person who acts for, or by arrangement with, a futures broker (other than a floor broker or a person who is a director of a corporation holding a futures broker’s licence or is a person who is in the direct employment of a futures broker) who performs any of the functions of that futures broker in connection with trading in futures contracts, whether his remuneration is by way of commission or otherwise;

“futures contract” means a contract the effect of which is that —

- (a) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified

price payable at that time pursuant to terms and conditions set forth in the business rules or practices of an Exchange or futures market; or

- (b) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the business rules or practices of the Futures Exchange or futures market at which the contract is made,

and includes a futures option transaction;

“futures market” means a market, Exchange or other place at which futures contracts are regularly made whether that market, Exchange or place is in or outside Singapore;

“futures option transaction” means a transaction in relation to a futures contract which gives a person a right, acquired for a consideration, to buy or sell a specified amount of a commodity at a specified price within a specified period of time and includes any other option of which the subject is a futures contract;

“futures pool operator” means any person who carries on a business, in the nature of a unit trust or other interest to which Division 6 of Part IV of the Companies Act applies, and who in connection therewith accepts or receives from other persons funds, security or property, either directly or through capital contributions, the sale of shares or other forms of security or otherwise for the purpose of trading in a futures contract but does not include such persons as the Authority may by regulations prescribe;

“futures pool operator’s representative” means a person in the direct employment of, or acting for, or by arrangement, with a futures pool operator, who performs for such futures pool operator any of the functions of a futures pool operator;

“futures trading adviser” means any person who carries on the business of advising others, directly or indirectly, through publications or writings, or by whatever means or media advises others concerning futures contracts, including the advisability of trading in any futures contract made or to be made on, or subject to the business rules of, a futures market or who as part of a regular business issues or promulgates analyses or reports concerning futures trading but does not include —

- (a) a bank that is licensed under the Banking Act or a merchant bank approved by the Authority under the Monetary Authority of Singapore Act; Cap. 19.
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- (b) a futures broker, futures broker’s representative, futures pool operator or futures pool operator’s representative;
- (c) a person who carries on the business of printing or publishing a newspaper and is the holder of a permit issued under the Newspaper and Printing Presses Act where — Cap. 206.
 - (i) insofar as the newspaper is distributed generally to the public it is distributed only to subscribers to, and purchasers of, the newspaper for value;
 - (ii) the advice is given or the analyses or reports are issued or promulgated only through that newspaper; and
 - (iii) that person receives no commission or other consideration for giving the advice or for issuing or promulgating the analyses or reports; and
- (d) such other persons as the Authority may by regulations prescribe,

so long as the carrying on of the business by the abovementioned persons is solely incidental to the carrying on of their business;

“futures trading adviser’s representative” means a person in the direct employment of, or acting for, or by arrangement with, a futures trading adviser, who performs for that futures trading adviser any of the functions of a futures trading adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise; and, where the futures trading adviser is a corporation, includes any director, member or officer of the corporation who is not the holder of a futures trading adviser’s licence and who performs for that corporation any of the functions of a futures trading adviser (whether or not his remuneration is by way of salary, wages, commission or otherwise);

“member” means a person who holds membership of any class or description of a Futures Exchange whether or not he holds any share in the share capital of that Exchange;

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“officer” has the same meaning as in the Companies Act;

“trading in futures contracts”, in relation to any person, whether acting as principal or agent, means —

- (a) making or offering to make an agreement with any other person or inducing or attempting to induce any other person to enter into an agreement for the purchase or sale of a futures contract; or
- (b) soliciting or accepting any order for, or otherwise dealing in, a futures contract.

PART II

FUTURES EXCHANGE AND CLEARING HOUSE AND ACCEPTANCE OF FORM OF CONTRACTS

Establishment of futures markets, etc., in Singapore.

3.—(1) No person shall, subject to subsections (3) and (4), establish or maintain or assist in establishing or maintaining or hold himself out as providing or maintaining a futures market in Singapore that is not the futures market of a Futures Exchange that has been approved by the Authority under section 4 (2).

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

(3) The Authority may, by notification in the *Gazette*, declare any futures market (whether in existence before or after the commencement of this Act) to be exempt from the prohibition under subsection (1) subject to such requirements, conditions or restrictions as it may think fit to impose.

(4) Subsection (1) shall not apply to the futures market established and maintained by the Singapore International Monetary Exchange Ltd., and no approval of the Authority is accordingly required under section 4 but the futures market of the Exchange shall be subject to the other provisions of this Act.

4.—(1) Application by a body corporate for approval as a Futures Exchange may be made to the Authority in such form and manner as may be prescribed and the body corporate shall, in connection with that application, provide such information as the Authority may require.

Power of
Authority
to approve
an Exchange.

(2) The Authority may, in writing, approve a body corporate as a Futures Exchange if it is satisfied that —

(a) the business rules of the body corporate make satisfactory provision —

- (i) for the exclusion from membership of persons who are not of good character and high business integrity;
- (ii) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules of the proposed Futures Exchange;
- (iii) with respect to the terms and conditions under which futures contracts may be made in the futures market of the proposed Futures Exchange, or with respect to the classes of futures

contracts that may be made by members;

- (iv) with respect to the clearing and other arrangements made and the financial condition of the Futures Exchange, its clearing house and its members are such as to provide reasonable assurance that all obligations arising out of futures contracts entered into on that Futures Exchange will be met;
- (v) that floor trading practices are fair and properly supervised;
- (vi) that adequate measures have been taken to prevent manipulation and excessive speculation;
- (vii) that adequate provision has been made to record and publish details of trading;
- (viii) with respect to the establishment of a Compensation Fund, or any other scheme or system accepted by the Authority, which would compensate customers who suffer pecuniary loss through the defalcation of a member, or any of its directors or employees, in respect of any money or other property that was entrusted to or received by a member, or a director or employee, for or on behalf of any person or by reason that the member was trustee of the money or other property; and
- (ix) generally for carrying on the business of the proposed Futures Exchange with due regard to the interests and protection of the public; and

(b) the interests of the public will be served by granting the application.

(3) The Authority shall not refuse to approve a body corporate as a Futures Exchange under this section without giving the applicant an opportunity of being heard.

Amendments
of business
rules.

5.—(1) Where an amendment is made by way of rescission, substitution, alteration or addition to the

business rules of a Futures Exchange or clearing house, the Futures Exchange or clearing house, as the case may be, shall forthwith forward written notice thereof to the Authority giving the text of the amendment, the date on which it was made and an explanation of the purpose of the amendment.

(2) If the notice required to be given under subsection (1) is not given within 10 days after the making of the amendment, that amendment shall cease to have force and effect.

(3) The Authority may, within 28 days after the receipt of a notice under subsection (1), disallow, by notice in writing to an Exchange or clearing house, as the case may be, the whole or a specified part of the amendment in question and, thereupon, such whole or any specified part of the amendment, as the case may be, shall cease to have force and effect.

(4) In addition to the power conferred upon the Authority under subsection (3), the Authority may of its own motion, by notice in writing to an Exchange or clearing house, alter or supplement the business rules of that Exchange or clearing house, or alter or supplement the terms and conditions of any futures contract traded on that Exchange, if it considers such action is necessary for the protection of traders or to ensure fair dealing in a futures market.

6.—(1) The Authority may revoke any approval granted under section 4 if — Revocation
of approval.

- (a) the body corporate ceases to operate as a Futures Exchange;
- (b) the body corporate is being wound up;
- (c) the body corporate is operating in a manner detrimental to the public interest; or
- (d) any information provided to the Authority under section 4 (1) was false or misleading in a material particular.

(2) For the purposes of subsection (1) (a) a body corporate shall be deemed to have ceased to operate as a Futures Exchange if it has ceased to operate for more than 30 days unless it has obtained the approval of the Authority

to do so, or unless it has ceased to operate by virtue of any direction issued by the Authority under section 41 (1) (a).

(3) Any person who is aggrieved by the decision of the Authority made under subsection (1) may, within 30 days of the decision of the Authority, appeal to the Minister whose decision shall be final and shall not be called in question in any court.

Establishment of clearing house.

7.—(1) No person shall establish, maintain or provide or assist in establishing, maintaining or providing, or hold himself out as maintaining or providing a clearing house for a futures market of a Futures Exchange unless the person is a body corporate approved as a clearing house under section 8.

(2) Subsection (1) shall not apply to the clearing house of a futures market established and maintained by the Singapore International Monetary Exchange Ltd. and no approval of the Authority is accordingly required under section 8 but that clearing house shall be subject to the other provisions of this Act.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

Power of Authority to approve clearing house.

8.—(1) Application by a body corporate for approval as a clearing house may be made to the Authority in such form and manner as may be prescribed and the body corporate shall, in connection with that application, provide such information as the Authority may require.

(2) The Authority may in writing approve a body corporate as a clearing house if it is satisfied that —

- (a) the business rules of the body corporate make satisfactory provision relating to the registration of, and guaranteeing to its members of the performance of, futures contracts made in a futures market; and
- (b) the interests of the public will be served by granting the application.

9.—(1) Any person, who is aggrieved by the failure of an Exchange or a clearing house or any of the directors or employees of the Exchange or clearing house to enforce its business rules or in enforcing those business rules contravenes this Act or any regulations made thereunder, has a right of action in damages for the actual amount of damages suffered by that person in any transaction that he has entered into on or subject to the business rules of a futures market that is directly attributable to the failure to enforce, or in the enforcement of the business rules, in contravention of this Act or the regulations, as the case may be.

Exchange or clearing house, etc., liable for failing to enforce its business rules, etc., only if bad faith shown.

(2) No action for damages shall lie against an Exchange or a clearing house, or any of its directors or employees under subsection (1) unless the aggrieved person can show that, in failing to take action or in taking such action as was taken resulting in loss to him, the Exchange or the clearing house, or any of the directors or employees, acted in bad faith.

(3) The right of action conferred by this section shall be the exclusive remedy available to any person who suffers loss as a result of an alleged failure of an Exchange or a clearing house, or any of its directors or employees, to enforce its business rules, or in enforcing those business rules, has contravened this Act or any regulations made thereunder.

PART III

LICENCES

10. Where a person would, but for this section, be liable to a penalty for not being licensed under this Part, he shall not be so liable —

Grace period for licensing.

- (a) until the expiration of a period of 6 months after the commencement of this Act; or
- (b) where, before the expiration of that period, he applies to be licensed, until —
 - (i) he is licensed; or
 - (ii) his application to be licensed is refused.

11.—(1) Subject to any regulations made under this Act, no person, whether as principal or agent, shall —

Futures broker's licence.

- (a) carry on business as a futures broker; or

(b) hold himself out as carrying on such a business, unless such person —

- (i) is licensed as a futures broker under this Act; and
- (ii) trades in accordance with the business rules and practices of an Exchange or futures market on which the trading takes place.

(2) Subsection (1) shall not apply to a person who is a floor broker.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

Licences.

12.—(1) Subject to any regulations made under this Act, no person shall act as, or hold himself out as —

- (a) a futures broker's representative;
- (b) a futures trading adviser;
- (c) a futures trading adviser's representative;
- (d) a futures pool operator; or
- (e) a futures pool operator's representative,

unless he is the holder of a licence issued under this Part that authorises him to act as such.

(2) The holder of a futures broker's licence shall not be required to hold a futures trading adviser's licence.

(3) (a) A futures broker's licence and a futures pool operator's licence shall only be granted to a corporation.

(b) A futures trading adviser's licence may be granted to an individual or a corporation.

(c) A futures broker's representative's licence, a futures trading adviser's representative's licence and a futures pool operator's representative's licence may only be granted to an individual.

(4) Any person who contravenes subsection (1) (b) and (d) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both, and any person who contravenes subsection (1) (a), (c) and (e) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

13.—(1) An application for a licence or for the renewal thereof shall be made to the Authority in such form and manner as may be prescribed and shall be accompanied by the prescribed fee and, in the case of an application for renewal of a licence, shall be made within one month before the expiry of the licence.

Application for licence or renewal.

(2) The Authority may require an applicant to provide it with such further information as it considers necessary in relation to the application.

(3) The Authority shall not refuse to grant or renew a licence without first giving the applicant an opportunity of being heard.

14. The Authority may refuse to grant or renew a licence under this Part —

Authority to refuse to grant or renew licences in certain circumstances.

(a) in the case of an applicant who is an individual, on the grounds that —

- (i) the applicant has not provided the Authority with such information relating to him or any person employed by or associated with him for the purposes of his business, and to any circumstances likely to affect his method of conducting business, as may be prescribed under this Act;
- (ii) the applicant is an undischarged bankrupt or has committed an act of bankruptcy within the meaning of the Bankruptcy Act or has made a composition or arrangement with his creditors;
- (iii) it appears to the Authority that, by reason of the applicant, or any person employed by or associated with him for the purposes of his business, having been convicted, whether in Singapore or elsewhere, of an offence the conviction for which involved a finding that he acted fraudulently or dishonestly, or having been convicted of an offence under this Act, or having committed a breach of any regulations made under this Act relating to licensed persons, the

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applicant is not a fit and proper person to be licensed; or

- (iv) it appears to the Authority that, by reason of any other circumstances whatsoever which either are likely to lead to the improper conduct of business by, or reflect discredit on the method of conducting the business of, the applicant or any person employed by or associated with him for the purpose of his business, the applicant is not a fit and proper person to be licensed;

(b) in the case of an applicant that is a corporation, on the grounds that —

- (i) the applicant has not provided the Authority with such information relating to it or any person employed by or associated with it for the purposes of its business, and to any circumstances likely to affect its method of conducting business, as may be prescribed under this Act;
- (ii) the applicant has at any time prior to the application entered into any composition or arrangement with its creditors;
- (iii) it appears to the Authority that, by reason of the applicant, or any of its directors or employees, having been convicted, whether in Singapore or elsewhere, of an offence the conviction for which involved a finding that it or he acted fraudulently or dishonestly, or having been convicted of an offence under this Act, or having committed a breach of any regulations made under this Act relating to licensed persons, the applicant is not a fit and proper person to be licensed; or
- (iv) it appears to the Authority that, by reason of any other circumstances whatsoever which either are likely to lead to the improper conduct of business by, or

reflect discredit on the method of conducting the business of, the applicant or any of its directors or employees, the applicant is not a fit and proper person to be licensed.

15.—(1) The Authority may grant or renew a licence subject to such conditions or restrictions as it thinks fit. Power of Authority to impose conditions or restrictions.

(2) A person who contravenes or fails to comply with any condition of, or restriction in, his licence shall be guilty of an offence.

16.—(1) Subject to subsection (2), a licence shall be in force for a period of one year, with effect from the date of its issue. Period of licence.

(2) A licence that has been renewed in accordance with the provisions of this Part shall continue in force for a period of one year next succeeding the date upon which but for its renewal it would have expired.

17.—(1) The holder of a futures broker's licence, futures trading adviser's licence or futures pool operator's licence shall, upon any change in the address of the principal place of business at which he carries on the business in respect of which the licence is held, forthwith notify the Authority of the new address in the prescribed form and, upon ceasing to carry on the business, shall forthwith so notify the Authority in writing. Change of address.

(2) The holder of a representative's licence who ceases to be a representative of a futures broker, futures trading adviser or futures pool operator in relation to whom the representative's licence was issued shall forthwith so notify the Authority in writing.

18. A person who, in connection with an application for a licence or for the renewal of a licence, wilfully makes a statement false or misleading in a material particular, knowing it to be false or misleading, or wilfully omits to state any matter or thing without which the application is misleading in a material respect, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both. False statements.

Register
of licence
holders.

19.—(1) The Authority shall keep in such form as it thinks fit a register of the holders of current licences specifying —

(a) in relation to each holder of a futures broker's licence, futures trading adviser's licence or futures pool operator's licence —

(i) his name;

(ii) the address of the principal place of business at which he carries on the business in respect of which the licence is held; and

(iii) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and

(b) in relation to each holder of a representative's licence —

(i) his name;

(ii) the name of the futures broker, futures trading adviser or futures pool operator in relation to whom the licence was issued; and

(iii) where the business of that futures broker, futures trading adviser or futures pool operator is carried on under a name or style, other than the name of the futures broker, futures trading adviser or futures pool operator, the name or style under which that business is carried on.

(2) Any person may, upon payment of the prescribed fee, inspect and take extracts from the register kept under subsection (1) and any such extract, purporting to be signed by the Authority, shall be admissible as evidence in any legal proceedings.

Revocation
of licence.

20.—(1) A licence shall be deemed to be revoked, in the case of —

(a) an individual, if the individual dies;

(b) a corporation, if the corporation is wound up.

(2) The Authority may revoke a licence —

(a) in the case of a licensed person who is an individual —

- (i) on any ground on which the Authority may refuse to license under section 14 (a);
- (ii) if a levy of execution in respect of him has not been satisfied;
- (iii) if he fails or ceases to carry on business for which he was licensed;
- (iv) if, in the case of a representative, the licence of the futures broker, futures trading adviser or futures pool operator, in relation to whom the licence was granted, is revoked;
- (v) if the Authority has reason to believe that the licensed person has not performed his duties efficiently, honestly or fairly; or
- (vi) if the licensed person contravenes or fails to comply with any condition or restriction applicable in respect of the licence;

(b) in the case of a corporation —

- (i) on any ground on which the Authority may refuse to grant a licence under section 14 (b);
- (ii) if it is being or will be wound up;
- (iii) if a levy of execution in respect of it has not been satisfied;
- (iv) if it has entered into any composition or arrangement with its creditors;
- (v) if it fails or ceases to carry on the business for which it was licensed;
- (vi) if the Authority has reason to believe that the licensed person, or any of its directors or employees, has not performed their duties efficiently, honestly or fairly; or
- (vii) if the licensed person contravenes or fails to comply with any conditions or restrictions applicable in respect of the licence.

(3) The Authority may revoke the licence of a person at the request of that person.

(4) The Authority shall not revoke the licence under subsection (2) without first giving such person an opportunity of being heard.

Powers of Authority in cases of misconduct, etc.

21.—(1) The Authority may inquire into any allegation that a licensed person is or has been guilty of any misconduct or is no longer a fit and proper person to continue to remain licensed by reason of any other circumstances which have led, or are likely to lead, to the improper conduct of business by him or to reflect discredit on the method of conducting his business.

(2) If after inquiring into an allegation under subsection (1) against a licensed person, the Authority is of the opinion that the allegation is proved, it may if it thinks fit —

- (a) revoke the licence of the person;
- (b) suspend the licence of the person for such period, or until the happening of such event, as the Authority may determine; or
- (c) reprimand the person.

(3) The Authority shall, at the hearing of an inquiry into an allegation under subsection (1) against a licensed person, give the person an opportunity of being heard.

(4) Where the Authority is satisfied, after making an inquiry into an allegation under subsection (1), that the allegation has been made in bad faith or that it is otherwise frivolous or vexatious, it may by order in writing require the person who made the allegation to pay any costs and expenses involved in the inquiry.

(5) For the purposes of this section, “misconduct” means —

- (a) any failure to comply with the requirements of this Act with respect to licensed persons; and
- (b) any act or omission relating to the conduct of business of a licensed person which is or is likely to be prejudicial to the public interest.

Effect of revocation or suspension of licence.

22.—(1) A person whose licence is revoked under section 20 or revoked or suspended under section 21 shall, for the purpose of this Part, be deemed not to be licensed

from the date that the Authority revokes or suspends the licence, as the case may be.

(2) A revocation or suspension of a licence of a person shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to the trading in futures contracts entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

23. Where —

- (a) the Authority refuses to grant or renew a licence under section 14;
- (b) the Authority revokes a licence under section 20; or
- (c) the licence is revoked or suspended, or a licensed person is reprimanded, under section 21,

Appeal against refusal to license, etc.

any person who is aggrieved by the decision of the Authority may, within one month after he is notified of the decision, appeal to the Minister whose decision shall be final.

24. Notwithstanding anything in this Part, no person shall be licensed as a futures broker unless he meets and can continue to meet such minimum financial requirements as are prescribed by the Authority, either generally or specifically, or provided in such business rules of an Exchange as has been approved by the Authority.

Minimum financial requirements.

PART IV

ACCOUNTS AND AUDIT

25.—(1) A futures broker shall —

- (a) cause to be kept such accounting and other records as will sufficiently explain the transactions and reflect the financial position of the business of trading in futures contracts carried on by him and as will enable true and fair profit and loss

Accounts to be kept by futures brokers.

accounts and balance-sheets to be prepared from time to time; and

- (b) cause those records to be kept in such a manner as will enable them to be conveniently and properly audited.

(2) Without prejudice to the generality of subsection (1), a futures broker shall cause records to be kept —

- (a) in sufficient detail to show particulars of —

- (i) all amounts received and paid by the futures broker, including amounts paid to and disbursed from a segregated trust account kept under section 37; and

- (ii) all purchases and sales of futures contracts made by the futures broker, and the charges and credits arising from them; and

- (b) in sufficient detail to show separately particulars of all transactions by the futures broker with, or for the account of —

- (i) the customer of the futures broker; and

- (ii) the futures broker himself.

(3) A futures broker shall retain for a period of not less than 6 years —

- (a) the records kept in accordance with this section; and

- (b) (i) a copy of each futures contract made out by him as agent of a customer; and

- (ii) each futures contract received by him or made out to himself as principal.

(4) Records required to be kept by a futures broker by this section shall be kept either by making entries in a bound book, or by recording or storing the relevant matters in any other manner as may be approved by the Authority, and anything so entered, recorded or stored shall be deemed to have been effected by, or with the authority of, the futures broker.

(5) The futures broker shall take reasonable precautions for guarding against falsification and damage or loss and for facilitating discovery of any falsifications.

(6) Any futures broker who, without reasonable excuse, contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

26. A futures broker shall appoint an auditor to audit his accounts (including all segregated trust accounts required to be kept by the futures broker under section 37) and, where for any reason the auditor ceases to act for the futures broker, the futures broker shall, as soon as practicable thereafter, appoint another auditor to replace him.

Futures brokers to appoint auditors.

27.—(1) A futures broker shall —

(a) in respect of the financial year beginning before and ending after the commencement of this Act or the day on which the futures broker commences to carry on business as a futures broker, whichever is later; and

Futures brokers to lodge annual accounts, etc.

(b) in respect of each subsequent financial year, prepare a true and fair profit and loss account and a balance-sheet made up to the last day of the financial year and lodge the account and balance-sheet with the Authority within 3 months, or such extension thereof permitted by the Authority under subsection (2), after the end of the financial year, together with an auditor's report on the accounts and balance-sheet.

(2) Where an application for the extension of the period of 3 months specified in subsection (1) is made by a futures broker to the Authority and the Authority is satisfied that there are special reasons for requiring the extension, the Authority may extend that period by 3 months, subject to such conditions as the Authority thinks fit to impose.

(3) Any futures broker who fails to comply with subsection (1), or with any condition imposed under subsection (2), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

28. If, during the performance of his duties as auditor for a futures broker, an auditor —

(a) becomes aware of any matter which in his opinion adversely affects or may adversely affect the

Reports by auditor to the Authority in certain cases.

financial position of the futures broker to a material extent; or

(b) discovers evidence of a contravention by the futures broker of section 25 or 37,

he shall, as soon as practicable thereafter, send to the Authority a report in writing of the matter or the contravention.

Power of Authority to appoint auditor.

29.—(1) Where —

(a) a futures broker fails to lodge an auditor's report under section 27; or

(b) the Authority receives a report under section 28, the Authority may, without prejudice to its powers under section 35, if it is satisfied that it is in the interests of the futures broker, futures broker's customers, or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books, accounts and records of the futures broker.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by it under subsection (1) should be borne by the futures broker, the Authority may, by order in writing, direct the futures broker to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified in the order.

(3) Where a futures broker fails to comply with an order under subsection (2), the amount specified in the order may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under this section shall, on the conclusion of the examination and audit, make a report thereon to the Authority.

Power of auditors appointed by the Authority.

30.—(1) An auditor appointed under section 29 to examine and audit the books, accounts and records of a futures broker may, for the purpose of carrying out the examination and audit —

(a) examine on oath any of the futures broker's directors, employees and agents and any other auditor appointed under this Act in relation to those books, accounts and records;

- (b) require any of the futures broker's directors, employees and agents, to produce any books, accounts and records held by or on behalf of the futures broker relating to his business and make copies of or take extracts from or retain possession of the books, accounts and records for such period as is necessary to enable them to be inspected;
- (c) require an auditor appointed by the futures broker to produce any books, accounts and records held by him relating to the business of the futures broker;
- (d) require an Exchange or a clearing house to produce any books, accounts and records kept by it relating to the business of the futures broker;
- (e) require an Exchange or a clearing house to provide any information in its possession relating to the business of the futures broker;
- (f) employ such persons as he considers necessary to assist him to carry out the examination and audit; and
- (g) by instrument in writing under his hand, authorise any person employed by him to do, in relation to the examination and audit, any act or thing that he could do himself as an auditor, except the examination of any person on oath, under this subsection.

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an auditor appointed under section 29, or a person authorised under subsection (1) (g), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

(3) If an Exchange or a clearing house, without reasonable excuse, fails to comply with any request made to it by an auditor appointed under section 29, or a person authorised under subsection (1) (g), the Exchange or the clearing house shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000.

Offences to destroy, alter, etc., records.

31.—(1) Any person who, with intent to prevent, delay or obstruct the carrying out of any examination and audit under this Part —

- (a) destroys, conceals or alters any book, account or record relating to the business of a futures broker; or
- (b) sends, or conspires with any other person to send, out of Singapore any such book, account or record, or any property of any description belonging to or in the possession or under the control of a futures broker,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) If, in a prosecution of an offence under subsection (1), it is proved that the person charged —

- (a) destroyed, concealed or altered any book, account or record mentioned in subsection (1) (a); or
- (b) sent, or conspired to send, out of Singapore any such book, account or record, or any property mentioned in subsection (1) (b),

the onus of proving that in so doing he did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Part shall lie on him.

Restriction on auditor's and employee's right to communicate certain matters.

32. Except as may be necessary for the carrying into effect the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 29 or 35 and any employee of such auditor shall not divulge any information which may come to his knowledge in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

- (a) the Authority or any person approved or designated by the Authority; and
- (b) in the case of an employee, the auditor by whom he is employed.

Exchange may impose additional obligations on members.

33. Nothing in this Part shall prevent an Exchange from imposing on futures brokers any further obligations or requirements which it thinks necessary with respect to —

- (a) the audit of accounts;

- (b) the information to be given in reports by auditors;
or
- (c) the keeping of accounts, books and records.

34.—(1) Every futures trading adviser and futures pool operator shall cause to be kept such books and records and file such reports, in such form and manner, as may be prescribed by the Authority.

Maintenance of books and records and furnishing accounts, etc., by futures trading adviser and futures pool operator.

(2) Every futures trading adviser and futures pool operator shall make full and complete disclosure to his subscribers, customers or participants of all open futures market positions taken or held by the futures trading adviser or futures pool operator on their behalf or if a corporation by any director, manager or employee of the corporation, whether directly or indirectly.

(3) Every futures pool operator shall furnish —

- (a) statements of account, at such periodic intervals, as the Authority may prescribe; and
- (b) an annual report,

to each participant in his pool operations.

(4) Such statements and annual report shall be in such form and manner as may be prescribed by the Authority and shall include complete information as to the current status of all trading accounts in which such participant has an interest.

(5) Any person who, without reasonable excuse, contravenes subsection (1), or who knowingly or recklessly furnishes any information under subsections (2) and (3) which is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) The provisions of this Part in relation to the appointment of an auditor whether by the Authority or otherwise and powers and duties of an auditor and the filing of an auditor's report shall, *mutatis mutandis*, apply to a Futures Exchange, a clearing house, a futures trading adviser and a futures pool operator as they apply to a futures broker under this Part.

Additional powers of Authority in respect of auditors. Cap. 50.

35.—(1) Notwithstanding the provisions of the Companies Act or anything contained in this Part, the Authority may —

- (a) itself appoint an auditor under this Part; and
- (b) impose all or any of the following duties on an auditor of an Exchange, a clearing house, a futures broker, a futures trading adviser or a futures pool operator, as the case may be:
 - (i) a duty to submit such additional information in relation to his audit as the Authority considers necessary;
 - (ii) a duty to enlarge or extend the scope of his audit of the business and affairs of an Exchange, a clearing house, a futures broker, a futures trading adviser or a futures pool operator;
 - (iii) a duty to carry out any other examination or establish any procedure in any particular case; and
 - (iv) a duty to submit a report on any of the matters referred to in sub-paragraphs (ii) and (iii),

and an Exchange, a clearing house, a futures broker, a futures trading adviser or a futures pool operator, as the case may be, shall remunerate the auditor in respect of the discharge of all or any of the additional duties.

(2) If an auditor in the course of the performance of his duties as an auditor of an Exchange, a clearing house, a futures broker, a futures trading adviser or a futures pool operator, as the case may be, is satisfied that —

- (a) there had been a serious breach or non-observance of this Act, including the regulations made thereunder, or that otherwise a criminal offence involving fraud or dishonesty has been committed;
- (b) serious irregularities have occurred, including irregularities that jeopardise the funds, securities or property of the customers; or
- (c) he is unable to confirm whether claims of creditors are still covered by the assets,

he shall immediately report the matter to the Authority.

(3) An auditor appointed under subsection (1) (a) shall have all the powers conferred upon an auditor under section 30.

(4) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed under subsection (1) (a) should be borne by an Exchange, a clearing house, a futures broker, a futures trading adviser or a futures pool operator, as the case may be, the Authority may by order in writing direct that the Exchange, clearing house, futures broker, futures trading adviser or futures pool operator, as the case may be, shall pay a specified amount, being the whole or part of the costs and expenses within the time and manner specified in the order.

36.—(1) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of — Defamation.

(a) any statement made orally or in writing in the discharge of his duties; or

(b) the sending of any report to the Authority under section 28 or 35.

(2) This section does not restrict or affect any right, privilege or immunity that the auditor has, apart from this section, as a defendant in an action for defamation.

PART V

CONDUCT OF FUTURES BUSINESS

37.—(1) Subject to this section, every futures broker shall — Segregation of customer's funds by futures broker.

(a) treat and deal with all money, securities or property received by him from a customer to margin, guarantee or secure contracts in futures trading, or accruing to a customer as a result of such trading, as belonging to that customer; and

(b) account in a separate trust account, designated or evidenced as such, for all the money, securities or property received from the customer or accruing to the customer pursuant to paragraph (a),

and shall not commingle that money, security or property with the funds of the futures broker or use them to margin,

guarantee or to secure the contracts or extend the credit of any customer or person other than the person for whom they are held.

(2) Notwithstanding subsection (1), the money, securities or property received by a futures broker from his customers may, for convenience and for the benefit of his customers, be commingled and deposited in the same account or accounts with —

- (a) any bank;
- (b) a clearing house, whether in or outside Singapore;
- (c) another futures broker; or
- (d) any person who may be approved by the Authority for the purpose.

(3) Subject to any regulations made under this Act, a futures broker shall not withdraw money received by him and deposited in a separate trust account pursuant to subsection (1), otherwise than for the purpose of —

- (a) making a payment to, or in accordance with the instructions of, a person entitled to the money;
- (b) purchasing, margining, guaranteeing, securing, transferring, adjusting or settling dealings in futures contracts effected by the broker on the instructions of a customer of the futures broker;
- (c) defraying brokerage and other proper charges incurred in respect of dealings in futures contracts effected by the futures broker on the instructions of a customer of the broker;
- (d) reimbursing himself to the extent of any residual financial interest that he may have in the account as is mentioned in subsection (4);
- (e) investing the money in such manner as may be prescribed; or
- (f) making a payment that is otherwise authorised by law.

(4) Notwithstanding subsection (1), a futures broker may have a residual financial interest in a customer's trust account and from time to time may advance from his own funds sufficient money to prevent any or all customers' trust accounts from becoming under-margined.

(5) The Authority may exempt a futures broker or any class of futures brokers or any transaction or class of transactions relating to trading in futures contracts from the requirements in subsection (1) subject to such terms and conditions as in the opinion of the Authority provides reasonable protection for customers.

(6) Money, securities or property received from a customer and held by a futures broker in a separate trust account under subsection (1) shall not be available for payment of the debts of the futures broker to a creditor of the futures broker or be liable to be attached or taken in execution under the order or process of any court at the instance of such creditor unless the creditor is a customer of the futures broker and the debt owed to the creditor was incurred in connection with trading in futures contracts.

(7) Nothing in this section shall take away or affect a lawful claim or lien that a futures broker has against, or on, any money, securities or property held in an account under subsection (1).

(8) Nothing in this Act or any written law shall prevent an Exchange or a clearing house, with the approval of the Authority, from using the money, securities or property in a trust account to meet the obligations of a futures broker, being a member of the Exchange or the clearing house, who defaults, if —

- (a) the default of the futures broker is directly attributable to the failure of his customer to meet the obligations under a futures contract; and
- (b) the failure to use the money, securities or property in a trust account might jeopardise the financial integrity of the Exchange or the clearing house.

(9) In this section, “customer” means a person on whose account a futures broker carries on trading in futures contracts but does not include directors, employees and representatives and related corporations of the futures broker.

38.—(1) A futures pool operator shall operate its pool as an entity cognizable as a legal entity, separate from that of the futures pool operator.

(2) All money, securities or other property received by a futures pool operator from existing or prospective pool

Nature of a pool and the segregation of funds by a futures pool operator, etc.

participants for the purchase of an interest in a pool shall be received in the pool's name.

(3) No futures pool operator shall commingle the property of any pool that it operates or intends to operate with the property of any other person.

(4) The Authority may by regulations provide for the capital structure, minimum financial requirements, organisation and conduct of a pool operated by a futures pool operator and for the exemption of certain pools from the requirements of this section.

Risk disclosure by futures broker, futures pool operator and futures trading adviser.

39.—(1) No futures broker shall open a futures contract account for a customer unless he furnishes the customer with a separate written risk disclosure document which shall be in such form and manner as may be prescribed by the Authority, and receives from the customer an acknowledgment signed and dated by the customer that he has received and understood the nature and contents of the disclosure document.

(2) No futures pool operator shall directly or indirectly solicit, accept, or receive funds, securities or other property from a prospective participant in a pool that it operates or that it intends to operate unless on or before the date it engages in that activity the futures pool operator delivers or causes to be delivered to the prospective participant a risk disclosure document which shall be in such form and contain such information as the Authority may prescribe and receives from the prospective participant an acknowledgment signed and dated by him that he has received and understood the nature and contents of the disclosure document.

(3) No futures trading adviser shall solicit or enter into an agreement with a prospective client for the purpose of managing his futures trading account or guiding the client's futures trading by means of a systematic programme that recommends specific transactions unless the futures trading adviser at or before the time he engages in the solicitation or enters into the agreement (whichever is the earlier) delivers or causes to be delivered to the prospective client a risk disclosure document in respect of those purposes which shall be in such form and contain such information as the Authority may prescribe and receives from the prospective

client an acknowledgment signed and dated by him that he has received and understood the nature and contents of the disclosure document.

(4) Except as may be provided by any regulations made under this Act, no futures trading adviser shall solicit, accept or secure from an existing or prospective client money, securities or other property in the futures trading adviser's name to purchase, margin, guarantee or secure any interest of the client in a futures contract.

(5) Subsection (4) shall not apply to a futures broker who carries on the business of a futures trading adviser.

40. Any person who contravenes or fails to comply with any of the provisions of this Part shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both. Offences.

PART VI

POWERS OF THE AUTHORITY

41.—(1) Whenever the Authority has reason to believe that an emergency exists, it may direct an Exchange or a clearing house to take such action as the Authority considers necessary to maintain or restore orderly trading in, or liquidation of, any futures contract, or any class of futures contracts including but not limited to — Emergency powers.

- (a) terminating or suspending trading on an Exchange or a clearing house;
- (b) confining trading to liquidation of futures contracts;
- (c) ordering the liquidation of all positions or part thereof or the reduction in such positions;
- (d) limiting trading to a specific price range;
- (e) modifying trading days or hours;
- (f) altering conditions of delivery;
- (g) fixing the settlement price at which contracts are to be liquidated;
- (h) requiring any person to act in a specified manner in relation to trading in futures contracts or any class of futures contracts;

- (i) requiring additional margins for any contracts; and
- (j) modifying or suspending any of the business rules of an Exchange,

and the Exchange or clearing house shall comply with that direction.

(2) Where an Exchange or a clearing house fails to comply with the direction of the Authority under subsection (1), within such time as is specified by the Authority, the Authority may itself take action to set emergency margin levels in any futures contract, or class of futures contracts, or to fix limits that may apply to market positions acquired in good faith prior to the date of the Authority's action or such other action, including but not limited to those specified in subsection (1), as it thinks are necessary to maintain or restore orderly trading in or liquidation of futures contracts, or any class of futures contracts.

(3) In this section, "emergency" includes, in addition to threatened or actual market manipulations and corners, any act of government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity or any other undesirable situations or practices which in the opinion of the Authority constitutes an emergency.

(4) Without prejudice to subsection (1), where an Exchange or a clearing house exercises its powers under its rules to take emergency action, the Authority may modify such emergency action, including but not limited to the setting aside of that emergency action.

(5) Any person who is aggrieved by any action taken by the Authority, an Exchange or a clearing house under this section may appeal to the Minister whose decision shall be final and shall not be challenged in any court.

(6) Notwithstanding the lodging of an appeal under subsection (5), any emergency action taken by the Authority, an Exchange or a clearing house under this section shall continue to have force and effect until such time as the Minister makes a decision on the appeal.

42.—(1) For the purpose of diminishing or eliminating, or preventing excessive speculation in any commodity under a futures contract, the Authority or an Exchange, with the approval of the Authority, may, by notice in writing from time to time, establish and fix such limits as it considers necessary on the amount of trading which may be done or positions which may be held by any person, generally or specifically, under a futures contract on or subject to the business rules of a futures market.

Fixing of position and trading limits in futures contracts.

(2) In determining whether a person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such a person shall be included with the positions held and trading done by that person.

(3) Such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an express or implied agreement or understanding, as if the positions were held by, or the trading done by, a single person.

(4) This section shall not apply to transactions or positions which are bona fide hedging transactions or positions as defined by a futures market in accordance with such regulations as may be prescribed.

(5) No person shall directly or indirectly —

(a) buy or sell or agree to buy or sell, a futures contract on or subject to the regulations of the futures market to which the regulations apply, any number of such futures contract in excess of the trading limits fixed for one business day, or other stated period set by the Authority or an Exchange with the approval of the Authority; or

(b) hold or control a net buy or sell position under a futures contract on or subject to the business rules of the futures market in excess of any position limit fixed by the Authority or an Exchange with the approval of the Authority with respect to that futures contract.

(6) Nothing in this section shall preclude the Authority, or an Exchange with the approval of the Authority, from fixing different trading or position limits for different futures contracts or delivery months or for different days

remaining until the last day of trading in a contract or different trading limits for the purposes of subsection (5), or from exempting transactions under this section.

Production of records, etc., by Exchange, clearing house, futures broker, etc.

43.—(1) An Exchange, a clearing house, futures broker, futures trading adviser or futures pool operator shall —

- (a) produce any books, accounts and records kept by it or him in connection with, or for the purposes of, its or his business, or in respect of any trading in futures contracts;
- (b) collect and furnish any returns; and
- (c) provide any information relating to its or his business, or any trading in futures contracts, or any other specified information,

as the Authority may require.

(2) The Authority may on production of any books, accounts or records under subsection (1) take copies of them or extracts from them.

(3) If any of the persons or bodies mentioned in subsection (1), without reasonable excuse, fails to comply with any requirement under subsection (1), the person or body concerned shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

Records of transactions on Exchange or clearing house.

44.—(1) Every Futures Exchange and clearing house shall keep such records as are necessary for the proper recording of each transaction on the Exchange or clearing house and shall supply to any customer of any member of such Futures Exchange or clearing house, upon production of a written confirmation of any transaction with such member, particulars of the approximate time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation.

(2) The Authority may, at any time, require a Futures Exchange or a clearing house to deliver to it reports of transactions on the Exchange or clearing house in such form as the Authority may prescribe.

Information to be provided by market participants.

45.—(1) Upon a determination by the Authority that information concerning accounts may be relevant to determine whether manipulation, corner, squeeze or other market disorders exists in any futures market, the Authority

may, by notice in writing, require such information as it thinks necessary from any person, including a member of the Exchange or a clearing house or a futures broker or any customer in the futures market, and the person concerned shall provide the required information within such time as may be specified by the Authority.

(2) If the Authority has reason to believe that any person has failed to give the information required in the notice, it may without prejudice to any other penalty that may be imposed inform the Exchange or a clearing house which shall, in that event, prohibit the execution of, or acceptance for orders of, trades on the Exchange or a clearing house and in the months or expiration dates specified in the notice unless such trades offset open contracts of that person.

46.—(1) Where an Exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the Exchange, it shall forthwith inform the Authority in writing of the name of the member, the reason for, and nature of, the action taken, the amount of any fine and the period of any suspension.

Review of Exchanges' disciplinary action.

(2) The Authority may review any disciplinary action taken by an Exchange under subsection (1) and may affirm, modify or set aside the decision of the Exchange after giving the member and the Exchange an opportunity to be heard.

(3) Nothing in this section shall preclude the Authority, in any case where an Exchange fails to act against a member, from itself suspending, expelling or otherwise disciplining a member of the Exchange, but before so doing the Authority shall give the member and the Exchange an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Exchange or the Authority under this section may, within one month after he is notified of the decision, appeal to the Minister whose decision shall be final.

47.—(1) The Authority may conduct such investigations as it considers necessary to determine whether any person has contravened or is contravening any provisions of this Act.

Investigations by Authority.

(2) For the purpose of subsection (1) the Authority may, in writing, require any person named therein to testify or to

produce any document or other material relating to any matter under investigation, and such person shall forthwith comply with that requirement.

(3) Nothing in this section shall compel the production by an advocate or solicitor of a document or other material containing a privileged communication made by or to him in that capacity or otherwise the taking of any such document or other material which is in his possession but if the advocate or solicitor refuses to produce the document or other material, he shall nevertheless be obliged to give the name and address of the person (if he knows them) to whom or by or on behalf of whom that communication was made.

(4) The Authority may by regulations prescribe the practice and procedure to be followed in any investigation under this section.

(5) Any person who fails without reasonable excuse to comply with any requirement under subsections (2) and (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

Inspections
by Authority.

48.—(1) The Authority may, from time to time, inspect under conditions of secrecy, the books, accounts, documents and transactions of a Futures Exchange, a clearing house, a futures broker, a futures pool operator or a futures trading adviser.

(2) The Authority may appoint any person to exercise the power of the Authority under subsection (1).

(3) For the purpose of an inspection under this section, any of the persons or bodies referred to in subsection (1) under inspection shall afford the Authority access to, and shall produce, its books, accounts and documents and shall give such information and facilities as may be required to conduct the inspection.

(4) Any person appointed by the Authority shall, at all times, have the power to copy or take possession of the books, accounts and other documents of a Futures Exchange, a clearing house, a futures broker, a futures pool operator and a futures trading adviser.

(5) Any person who or body which, without reasonable excuse, fails to produce any book, account or document or furnish any information or facilities in accordance with

subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

49.—(1) Where it appears to the Authority that an Exchange, a clearing house or any person has failed to comply with, or is contravening any provision of, this Act or the regulations made thereunder, or is restraining trading in futures contracts, the Authority may, after giving the Exchange, clearing house or any such person an opportunity of being heard —

Power to
issue
directions.

- (a) direct the Exchange, clearing house or such person to comply with that provision or to cease contravention of that provision; or
- (b) direct the Exchange, clearing house or such person to desist from restraining trading in futures contracts,

and the Exchange, clearing house or such person shall comply with the direction.

(2) An Exchange, a clearing house or any person who fails, without reasonable excuse, to comply with a direction under subsection (1) that is applicable to it or to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) An Exchange, a clearing house or any person aggrieved by any direction issued under subsection (1) may, within one month after he is notified of the direction, appeal to the High Court.

(4) Notwithstanding the lodging of an appeal under subsection (3), any direction of the Authority given under this section shall continue to have force and effect until such time as the High Court makes a decision on the appeal.

PART VII

OFFENCES

50. No person shall create or cause to be created or do anything that is calculated to create a false or misleading appearance of active trading in a futures contract on a futures market or a false or misleading appearance with respect to the market for, or the price of trading in, futures contracts on a futures market.

False
trading.

Bucketing.

51. No person shall knowingly execute, or hold himself out as having executed, an order for the purchase or sale of a futures contract on a futures market, without having effected a bona fide purchase or sale of the futures contract in accordance with the business rules and practices of the futures market.

Dissemination of information about false trading.

52. No person shall circulate, disseminate, or authorise, or be concerned in, the circulation or dissemination of, any statement or information to the effect that the price of trading in a class of futures contracts will, or is likely to, rise or fall because of the market operations of one or more persons which, to his knowledge, are conducted in contravention of section 50.

Manipulation of price of a futures contract and cornering.

53. No person shall, directly or indirectly —

- (a) manipulate or attempt to manipulate the price of a futures contract that may be dealt in on a futures market, or of any commodity which is the subject of such futures contract; or
- (b) corner, or attempt to corner, any commodity which is the subject of a futures contract.

Employment of fraudulent or deceptive devices, etc.

54. No person shall, directly or indirectly, in connection with any transaction with any other person involving trading in a futures contract —

- (a) employ any device, scheme or artifice to defraud that other person;
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person; or
- (c) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

Fraudulently inducing trading in futures contracts.

55. No person shall, directly or indirectly, for the purposes of inducing or attempting to induce another person to trade in a futures contract, or class of futures contracts, make or publish —

- (a) any statement which is, at the time and in the light of the circumstances in which it is made, false,

misleading or deceptive with respect to any material fact and which he knows, or has reasonable grounds for believing, is false, misleading or deceptive; or

- (b) any statement which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which he knows, or has reasonable grounds for believing, is rendered false, misleading or deceptive by reason of the omission of that fact.

56. Any person who contravenes or fails to comply with any of the provisions of this Part shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.

Penalties.

57.—(1) A person, who contravenes any of the provisions of this Part and has been convicted of an offence in respect of the contravention, shall be liable to pay compensation to any other person who, in trading in futures contracts with the first-mentioned person or a person acting for or on behalf of the first-mentioned person, suffers loss by reason of the difference between the price at which the trading took place and the price at which it would have been likely to have taken place if the contravention had not occurred.

Convicted persons liable to pay compensation.

(2) The amount of compensation for which a person shall be liable under subsection (1) shall be the amount of the loss suffered by the person claiming the compensation.

(3) An action for the recovery of a loss shall not be commenced after the expiration of two years after the date of conviction of the person for an offence in respect of a contravention of a provision of this Part.

(4) Nothing in subsection (1) shall affect any liability that a person may incur under any other written law.

PART VIII

MISCELLANEOUS

58. For the purpose of this Act and any other written law or rule of law a futures contract made at a futures market shall not be regarded as a contract of gaming or wagering.

Futures contracts not gaming or wagering contracts.

Secrecy.

59.—(1) Every director, officer or employee of an Exchange or a clearing house shall preserve, and aid in preserving, secrecy with regard to all matters coming to his knowledge in the exercise or performance of his duties.

(2) Subsection (1) shall not apply —

(a) to the disclosure of any information which is authorised by the Authority to be disclosed or furnished;

(b) to the disclosure of information for the purpose of any legal proceeding brought under this Act, or any other written law, or for the purpose of any report of any such proceedings, except that in relation to a customer's or futures broker's position such proceedings may, if the court, of its own motion or on the application of a party to the proceedings, so orders, be held *in camera* and the information shall be secret as between the court and the parties thereto; or

(c) to the disclosure of information for such other purposes, or in such other circumstances, as the Authority may by regulations prescribe.

(3) Any person who contravenes subsection (1), directly or indirectly, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

Offences by
directors
or managers.

60.—(1) Any person, being a director or manager of an Exchange, a clearing house, a futures broker, a futures trading adviser, or a futures pool operator, who —

(a) fails to take all reasonable steps to secure compliance with the provisions of this Act; or

(b) fails to take all reasonable steps to secure the accuracy and correctness of any statement submitted under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In any proceedings against a person under subsection (1), it shall be a defence to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the

requirements of this Act, or with the duty of ensuring that those statements were accurate, and that that person was competent, and in a position, to discharge that duty.

(3) A person shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court, he committed the offence wilfully.

61. Any director, manager, trustee, auditor, employee or agent of an Exchange, of a clearing house, of a futures broker, of a futures trading adviser or of a futures pool operator, who —

Falsification of records by directors, employees and agents.

- (a) wilfully makes, or causes to be made, a false entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, conditions, assets or accounts of that Futures Exchange, clearing house, futures broker, futures trading adviser or futures pool operator;
- (b) wilfully omits to make an entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, conditions, assets or accounts of that Futures Exchange, clearing house, futures broker, futures trading adviser or futures pool operator, or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, abstracts, conceals or destroys an entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, conditions, assets or accounts of that Futures Exchange, clearing house, futures broker, futures trading adviser or futures pool operator, or wilfully causes any such entry to be altered, abstracted, concealed or destroyed,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

62. Any person who with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading

False reports to Authority or Exchange.

statement or report to the Authority, an Exchange, a clearing house or any officers thereof relating to —

- (a) trading in futures contracts;
- (b) any matter or thing required by the Authority for the proper administration of this Act; or
- (c) the enforcement of the business rules of an Exchange or a clearing house,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

Immunity of Authority and its employees, etc.

63. No suit or other legal proceedings shall lie against the Authority or any officer or employee of the Authority or any person (including an Exchange or a clearing house) acting under the direction of the Authority for any act done in good faith in the performance, or intended performance, of any duty, or in the exercise of any power under this Act or the regulations, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Offences by corporations.

64. Where a corporation is guilty of an offence under this Act, any director, manager, secretary or other officer of the corporation who was, in any way, by act or omission, directly or indirectly, knowingly concerned in, or a party to, the commission of the offence is also guilty of that offence.

Prohibition of use of certain titles.

65.—(1) No person other than a Futures Exchange or clearing house, shall —

- (a) take or use the title “Futures Exchange” or “clearing house”; or
- (b) take or use, or have attached to or exhibited at any place, any title which resembles the titles specified in paragraph (a) or so closely resembles such titles as to be calculated to deceive.

(2) A person who is not a futures broker, futures trading adviser or futures pool operator shall not —

- (a) take or use the title or description “futures broker”, “futures trading adviser” or “futures pool operator”; or
- (b) take or use, or have attached to or exhibited at any place, any title or description that resembles the

titles specified in paragraph (a) or so closely resembles such titles as to be calculated to deceive.

(3) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and in the case of a continuing offence to a further fine of \$2,000 for every day during which the offence continues after conviction.

66.—(1) Proceedings for an offence —

- (a) against any provision in Part VII may be taken only with the consent of the Attorney-General; and
- (b) against any other provision of this Act may be taken by the Authority or, with the consent of the Attorney-General, by any other person.

Proceedings by whom and when to be taken and power to compound offences.

(2) The Authority may, without instituting proceedings against any person for an offence under this Act or the regulations made thereunder, which is punishable only by a fine, demand and receive the amount of such fine or such reduced amount as it thinks fit, from such person, whereupon —

- (a) if that person pays that amount to the Authority within 14 days after the demand, no proceedings shall be taken against him in relation to the offence;
- (b) if that person does not pay the amount so demanded, the Authority may cause proceedings to be instituted in relation to the offence.

(3) The powers conferred upon the Authority under subsection (2) shall only be exercised where a person admits the offence and agrees in writing to the offence being dealt with under this subsection.

(4) Any punishment authorised by this Act may be imposed by a District Court, notwithstanding that it is a greater punishment than such Court is otherwise empowered to impose.

67. Any person, who fails to comply with any of the provisions of this Act for which no penalty is expressly provided, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

General penalty.

Exemption. **68.** The Authority may, if it considers it to be in the public interest and not inconsistent with the purposes of this Act, exempt any person from all or any of the provisions of this Act and may withdraw any such exemption.

Validation of acts done in anticipation of this Act. **69.** All acts and things done by any person in preparation for or in anticipation of this Act and any expenditure incurred in relation thereto shall be deemed to have been authorised under this Act, provided that the acts and things done are not inconsistent with the general intention and purposes of this Act.

Regulations. **70.—(1)** The Authority may make regulations for carrying out the purposes and provisions of this Act and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Authority may make regulations for or with respect to —

- (a) applications for licences or renewal of licences of futures brokers, futures trading advisers and futures pool operators and their representatives and matters incidental thereto;
- (b) the activities of, and standards to be maintained by futures brokers, futures trading advisers and futures pool operators including the manner, method and place of soliciting business by futures brokers, futures trading advisers and futures pool operators and the conduct of such solicitation;
- (c) prescribing the appropriate standards with respect to the qualifications, experience and training of applicants for licensing as licensed persons;
- (d) prescribing the conditions for the conduct of business on a Futures Exchange;
- (e) providing for the content and distribution of written, printed or visual material and advertisements that may be distributed or used by a person in respect of a futures contract;
- (f) prescribing the form and content of a confirmation statement of futures contracts entered into on behalf of customers by a futures broker;

- (g) prescribing the particulars to be recorded in, or in respect of, accounts kept by futures brokers, futures trading advisers and futures pool operators under this Act;
- (h) prescribing the particulars to be recorded in the profit and loss accounts and balance-sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of futures brokers;
- (i) providing for the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;
- (j) prescribing any forms for the purposes of this Act;
- (k) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act; and
- (l) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

(3) Such regulations may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$5,000 or imprisonment for a term not exceeding 12 months or both.

(4) Such regulations may provide that, subject to any terms and conditions prescribed, all or any of the provisions of this Act —

- (a) shall not have effect in relation to any specified person or to any person who is a member of a specified class of persons —
 - (i) who is, or may be, a futures broker, or futures trading adviser, or futures pool operator by reason only of his doing anything which is merely incidental to another business;
 - (ii) who does not trade in futures contracts for or on behalf of any other person; or
 - (iii) who is a futures broker or futures trading adviser or futures pool operator by reason only of the entering into by him

of any specified transaction or class of transactions;

- (b) shall not have effect in relation to the representative of any person referred to in paragraph (a);
or
- (c) shall have effect in relation to any person referred to in paragraph (a) or (b) to such extent as is prescribed.