

THE STATUTES OF THE REPUBLIC OF SINGAPORE

**FUTURES TRADING ACT
(CHAPTER 116)**

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Act
14 of 1986**

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9 of 1995
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Futures Trading Act

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An Act to regulate trading in futures contracts and leveraged foreign exchange trading and for matters connected therewith. ^{9/95.}

[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 — Inter-
pretation.
9/95.

“accredited investor” means —

 - (a) an individual whose net personal assets exceed \$5 million or its equivalent in value in foreign currencies; or
 - (b) a corporation with net assets exceeding \$10 million in value or its equivalent in value in foreign currencies as determined in accordance with the most recent audited balance-sheet of the corporation;

“auditor” means an approved company auditor as defined in section 4 of the Companies Act; 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 by-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 by-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 6 (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”, in relation to a futures contract, 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;

“connected person”, in relation to —

- (a) an individual, means —
 - (i) the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, mother, brother or sister; and
 - (ii) a firm or a corporation in which the individual or any of the persons mentioned in sub-paragraph (i) has control of not less than 20% of the voting power in the firm or corporation, whether such control is exercised individually or jointly;
- (b) a firm or a corporation, means another firm or corporation in which the first-mentioned firm or corporation has control of not less than 20% of the voting power in that other firm or corporation;

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

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

“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” includes 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;

“foreign exchange market” means —

- (a) a market, whether in Singapore or elsewhere, at which foreign exchange trading regularly takes place; or
- (b) an electronic system, whether operating in Singapore or elsewhere, through which foreign exchange trading is conducted; but excludes an electronic facility which merely provides price or other information on any foreign exchange market (whether the facility is part of or carried on in conjunction with the provision of any other information not related to foreign exchange trading) and which does not permit users of the facility to channel orders for, execute transactions in, or make a market in, foreign exchange transactions;

“foreign exchange trading” has the meaning given to it in section 2A;

“futures broker” means any person, whether as principal or agent, who —

- (a) carries on the business of soliciting or accepting orders, for the purchase or sale of any commodity under a futures contract on any Futures Exchange or futures market whether or not that person accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee or secure any contract or transaction that may result therefrom; or
- (b) carries on the business of leveraged foreign exchange trading,

whether the business is part of, or is carried on in conjunction with, any other business;

“futures broker’s representative” means any person in the direct employment of, or acting for, or by arrangement with, a futures broker who performs any of the functions of a futures broker (other than work ordinarily performed by accountants, clerks or cashiers) in connection with trading in futures contracts or leveraged foreign exchange trading, whether his remuneration is by way of commission, wages or otherwise; and includes any director, officer or employee of a corporation who performs for that corporation any of those functions (whether his remuneration is by way of commission, wages 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 a Futures Exchange or a 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 Exchange or futures market at which the contract is made,

and includes a futures option transaction;

“futures market” means —

- (a) a market, a Futures Exchange or other place, whether in Singapore or elsewhere, at which trading in futures contracts regularly takes place; or
- (b) an electronic system, whether operating in Singapore or elsewhere, through which trading in futures contracts is carried out; but excludes an electronic facility which merely provides price or other information on futures contracts (whether the facility is part of or carried on in conjunction with the provision of any other information not related to futures contracts) and which does not permit users of the facility to channel orders for, execute transactions in, or make a market in, futures contracts;

“futures option transaction” means a transaction which gives a person a right, acquired for a consideration, to buy or sell within a specified period of time a specified amount of commodity or a specified futures contract at a specified price in accordance with the business rules or practices of a Futures Exchange or a futures market at which the transaction is made;

“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 futures contracts, foreign exchange

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trading or leveraged foreign exchange trading but does not include such persons as the Authority may by regulations prescribe;

“futures pool operator’s representative” means any 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 —

- (a) carries on the business of advising other persons (directly or indirectly, through any publication or writing, or by whatever means or media) concerning futures contracts, foreign exchange trading or leveraged foreign exchange trading, including advice on whether to engage in trading in futures contracts, foreign exchange trading or leveraged foreign exchange trading;
- (b) as part of a regular business, issues or promulgates any analysis or report concerning futures markets or foreign exchange markets; or
- (c) pursuant to a contract or an arrangement with a client, undertakes on behalf of the client (whether on a discretionary authority granted by the client or otherwise) trading in futures contracts, foreign exchange trading or leveraged foreign exchange trading for the purposes of managing the client’s funds,

but does not include —

- (i) a bank that is licensed under the Banking Act or a merchant bank approved under the Monetary Authority of Singapore Act;
- (ii) an accountant or advocate and solicitor in practice whose carrying on of that business is solely incidental to the practice of his profession;
- (iii) a futures broker or futures pool operator (referred to in this sub-paragraph as the licensee) so long as any activity referred to

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in paragraph (a), (b) or (c) carried out by the licensee is wholly incidental to the carrying on of the business for which he is so licensed;

- (iv) a person who carries on the business of printing or publishing a newspaper and is the holder of a permit therefor issued under the Newspaper and Printing Presses Act (referred to in this definition as the proprietor) and the author of any advice, analysis or report published in that newspaper (referred to in this definition as the author) where —
- (A) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value;
 - (B) the advice is given or the analysis or report is issued or promulgated only through that newspaper;
 - (C) the proprietor receives no commission or other consideration for giving the advice or for issuing or promulgating the analysis or report other than the consideration received from the sale of the newspaper and advertisements placed in the newspaper;
 - (D) the author of the advice, analysis or report receives no commission or other consideration in respect of the advice, analysis or report other than the consideration received from the proprietor of the newspaper; and
 - (E) the proprietor and the author of the advice, analysis or report has no interest, directly or indirectly, in any futures

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contract referred to in the advice, analysis or report; and

- (v) such other person carrying on such business as the Authority may by regulations prescribe, so long as any activity referred to in paragraph (a), (b) or (c) carried out by that person is wholly incidental to the carrying on of such prescribed business;

“futures trading adviser’s representative” means any 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 commission, wages or otherwise; and includes any director, officer or employee of a corporation who performs for that corporation any of those functions (whether or not his remuneration is by way of commission, wages or otherwise);

“leveraged foreign exchange trading” has the meaning given to it in section 2A;

“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 the Exchange;

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

“related corporation” 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.

2A.—(1) In this Act, unless the context otherwise requires and subject to subsection (2) —

Meaning of foreign exchange trading and leveraged foreign exchange trading. 9/95.

“foreign exchange trading” means the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or an arrangement whereby a person undertakes to exchange currency at an agreed rate of exchange with another person whether the currency exchange is effected at the same time or at a future date and whether by way of delivery of an amount of currency for another currency, by way of crediting the account of the other person with an amount of another currency, by way of settlement or set-off between 2 or more persons or otherwise;

“leveraged foreign exchange trading” means —

(a) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or an arrangement on a margin basis (other than a contract or an arrangement that is made on a Futures Exchange or a futures market) whereby a person undertakes as determined by the terms and conditions of the contract or arrangement —

- (i) to make an adjustment between himself and another person according to whether a currency is worth more or less, as the case may be, in relation to another currency;
- (ii) to pay an amount of money determined or to be determined by reference to the change in value of a currency in relation to another currency; or
- (iii) to deliver to another person at an agreed future time an agreed amount of currency at an agreed price;

- (b) the provision by any person referred to in paragraph (a) of any advance, credit facility or loan, directly or indirectly, to facilitate an act of the description referred to in that paragraph; or
- (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person (whether on a discretionary basis or otherwise) to enter into any contract to facilitate an act of the description mentioned in paragraph (a) or (b).

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(2) For the purposes of the definitions of “foreign exchange trading” and “leveraged foreign exchange trading” in subsection (1) —

(a) the definitions shall not include any act performed for or in connection with a contract or an arrangement or a proposed contract or proposed arrangement —

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(i) arranged by a bank that is licensed under the Banking Act or a merchant bank approved under the Monetary Authority of Singapore Act;

(ii) by any person belonging to such class of persons, or carrying on such class or description of business as may be prescribed by the Authority; or

(iii) which falls within the definition of “futures contract” in section 2; and

(b) “on a margin basis” means the first-mentioned person referred to in the definition of “leveraged foreign exchange trading” entering into the contract or arrangement referred to therein by providing to the offeror or his agent with money, securities, property or other collateral which represents only a part of the value of the contract or arrangement to be entered into by him.

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(3) The Authority may by order modify the definition of “foreign exchange trading” or “leveraged foreign exchange trading” by applying it to such other financial instrument or unit of account as may be prescribed and such order may

provide for any necessary modification or adaptation to that definition.

PART II

FUTURES EXCHANGE AND CLEARING HOUSE AND ACCEPTANCE OF FORM OF CONTRACTS

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). Establishment of futures markets, etc., in Singapore.

(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 15th August 1986) 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 that 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 Futures 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 proposed 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 approving 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.

5.—(1) A Futures Exchange shall not list or de-list any futures contract on its Exchange or operate any electronic facility for trading of any futures contract without seeking the prior approval of the Authority. Power to approve futures contracts. 9/95.

(2) The Authority may grant approval for the listing of a futures contract on a Futures Exchange or for the trading of any futures contract on an electronic facility operated by the Exchange subject to such conditions as the Authority may think fit. 9/95.

(3) The requirement for approval under subsection (1) for the listing of futures contracts shall not apply to those contracts that, on 1st April 1995, are listed on the Singapore International Monetary Exchange Ltd. 9/95. [4A

6.—(1) Where an amendment is made by way of rescission, substitution, alteration or addition to the business rules of a Futures Exchange or a clearing house, the Exchange or the 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. Amendments of business rules.

(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 a Futures Exchange or a 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 a Futures Exchange or a clearing house, alter or supplement the business rules of the Exchange or the clearing house, or alter or supplement the terms and conditions of any futures contract traded on the Exchange, if it considers such action is necessary for the protection of traders or to ensure fair dealing in a futures market. [5

Revocation
of approval.

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

- (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, appeal to the Minister whose decision shall be final and shall not be called in question in any court. [6

Establish-
ment of
clearing
house.

8.—(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 9.

(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 9 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. [7

9.—(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.

Power of Authority to approve clearing house.

(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 approving the application. [8

10.—(1) Any person, who is aggrieved by the failure of a Futures Exchange or a clearing house or any of the directors or employees of the Exchange or the 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 any regulations made thereunder, as the case may be.

Futures 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 a Futures 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 its 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 a Futures 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. [9

PART III

LICENCES

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

- (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) in relation to the business of futures trading, trades in accordance with the business rules and practices of a Futures Exchange or a futures market on which the trading takes place.

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(2) The following persons shall, subject to compliance with such requirements as the Authority may by regulations prescribe, be exempted from subsection (1):

- (a) a person who carries on the business of leveraged foreign exchange trading only with accredited investors but not with any other person;
- (b) a person who carries on the business of trading in futures contracts or leveraged foreign exchange trading for his own account or for the account of a related corporation or related person;

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- (c) a person who is licensed under the Securities Industry Act or who is exempt under that Act or any regulations made thereunder from holding such a licence and who trades in futures contracts or enters into leveraged foreign exchange trading wholly in connection with and solely incidental to

the purchase or sale of securities or for the purpose of hedging a portfolio of securities.

(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.

(4) For the purposes of this section, “related person”, in relation to an individual, means —

- (a) the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, mother, brother or sister; and
- (b) a firm or a corporation in which the individual or any of the persons mentioned in paragraph (a) has control of not less than 50% of the voting power in the firm or corporation, whether such control is exercised individually or jointly.

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

- (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) A futures broker’s licence, a futures trading adviser’s licence and a futures pool operator’s licence may only be granted to a corporation. 9/95.

(3) 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. 9/95.

(4) Subsection (1) (a) and (c) shall not apply to any employee of a person referred to in subsection (2) of section 11 who has complied with the requirements in that subsection to the extent that he acts or holds himself out as such an employee. 9/95.

9/95. (5) Subsection (1) (b) shall not apply to a person referred to in subsection (2) of section 11 who has complied with the requirements in that subsection.

(6) Any person who contravenes subsection (1) (b) or (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.

(7) Any person who contravenes subsection (1) (a), (c) or (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.

Application
for licence or
renewal.
9/95.

13.—(1) An application for a licence or the renewal of a licence 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 the renewal of a licence, shall be made not later than one month before the expiry of the licence.

(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.

9/95.

(4) Where the Authority rejects an application for a licence or the renewal of a licence, the prescribed fee shall be refunded to the applicant but if the application is not rejected, the prescribed fee shall be payable notwithstanding the withdrawal of an application.

9/95.

(5) The Authority may determine the method or manner of payment of the licence fee referred to in subsection (1).

Authority to
refuse to
grant or
renew
licences in
certain
circum-
stances.
9/95.

14.—(1) Subject to section 13 (3) and any regulations made under this Act, where an application is duly made for the grant or renewal of any licence issued under this Act, the Authority may refuse to grant or renew a licence —

(a) in the case of an applicant who is an individual, on the ground 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 the Authority may require;
- (ii) the applicant is an undischarged bankrupt whether in Singapore or elsewhere or has made a composition or an arrangement with his creditors;
- (iii) the applicant, or any person employed by or associated with him for the purposes of his business, has been convicted, whether in Singapore or elsewhere, of an offence the conviction for which involved a finding that he acted fraudulently or dishonestly, or has been convicted of an offence under this Act, or has committed a breach of any regulations made under this Act relating to licensees;
- (iv) the applicant fails to satisfy the Authority that he is a fit and proper person to be licensed;
- (v) the Authority is not satisfied as to the educational or other qualification or experience of the applicant having regard to the nature of the duties of a licensee;
- (vi) the Authority has reason to believe that the applicant will not be able to perform the functions for which he is licensed efficiently, honestly or fairly;
- (vii) the Authority has reason to believe that the applicant may not be able to act in the best interests of his subscribers, customers or participants having regard to his reputation, character, financial integrity or reliability;
- (viii) the Authority is not satisfied as to the financial standing of the applicant;

- (ix) the Authority is not satisfied as to the record of past performance or expertise of the applicant;
 - (x) there are other circumstances which 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;
 - (xi) as far as the Authority can ascertain, the applicant is in arrears in the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act; or
 - (xii) the Authority is of the opinion that it is in the interests of the public to do so;
- (b) in the case of an applicant that is a corporation, on the ground 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 the Authority may require;
 - (ii) the applicant or its substantial shareholder is in the course of being wound up or liquidated;
 - (iii) a receiver or a receiver and manager has been appointed to the applicant or its substantial shareholder;
 - (iv) the applicant or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;

- (v) the applicant or its substantial shareholder, or any director, officer or employee of the applicant has 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 has been convicted of an offence under this Act, or has committed a breach of any regulations made under this Act relating to licensees;
- (vi) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant who are to perform duties in connection with the holding of the licence;
- (vii) the applicant fails to satisfy the Authority that it is a fit and proper person to be licensed or that all of its directors, officers, employees and substantial shareholders are fit and proper persons;
- (viii) the Authority has reason to believe that the applicant may not be able to act in the best interests of its subscribers, customers or participants having regard to the reputation, character, financial integrity and reliability of the applicant or any of its substantial shareholders, directors, officers or employees;
- (ix) the Authority is not satisfied as to the financial standing of the applicant or its substantial shareholder or the manner in which its business is to be conducted;
- (x) the Authority is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;
- (xi) there are other circumstances which 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 its substantial shareholder or any of the directors, officers or employees of the applicant; or

- (xii) the Authority is of the opinion that it is in the interests of the public to do so.

9/95.

(2) For the purposes of subsection (1), “substantial shareholder”, in relation to an applicant which is a corporation, has the same meaning as in the Companies Act.

Cap. 50.

Power of Authority to impose conditions or restrictions.
9/95.

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

(2) The Authority may, at any time, by notice in writing to the holder of a licence, vary any condition or restriction or impose such further condition or restriction as it may think fit.

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

Period of licence.

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.

(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.

Change of address.

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.

(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. Any person who, in connection with an application for a licence or the renewal of a licence, wilfully makes a statement which is 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.
S 22/89.

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

Register of
licence
holders.

(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.

9/95.

(2) The Authority may revoke a licence —

- (a) in the case of a licensee who is an individual —
 - (i) on any ground on which the Authority may refuse to grant a licence under section 14 (1) (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 licensee has not performed his duties efficiently, honestly or fairly; or
 - (vi) if the licensee contravenes or fails to comply with any condition or restriction applicable in respect of the licence;
- (b) in the case of a licensee which is a corporation —
 - (i) on any ground on which the Authority may refuse to grant a licence under section 14 (1) (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 licensee, or any of its directors or employees, has not performed their duties efficiently, honestly or fairly; or
- (vii) if the licensee contravenes or fails to comply with any condition or restriction 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.

21.—(1) The Authority may inquire into any allegation that a licensee 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.

Powers of Authority in cases of misconduct, etc.

(2) If, after inquiring into an allegation under subsection (1) against a licensee, the Authority is of the opinion that the allegation is proved, the Authority 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 licensee, give the licensee 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, the Authority 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 licensees; and
- (b) any act or omission relating to the conduct of business of a licensee 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.

9/95.

(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 or leveraged foreign exchange trading 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.

Appeal
against
refusal to
license, etc.

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 licensee is reprimanded, under section 21,

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.

Minimum
financial
requirements.
9/95.

24. Notwithstanding anything in this Part, no person shall be licensed as a futures broker or a futures trading adviser unless he meets and can continue to meet such minimum financial requirements as are prescribed by the Authority,

either generally or specifically, or as are provided in such business rules of a Futures Exchange as has been approved by the Authority.

24A.—(1) If a futures broker becomes aware of any inability by it to comply with the minimum financial requirements prescribed by the Authority under section 24, the futures broker shall forthwith —

Failure to maintain minimum financial requirements. 9/95.

- (a) notify the Authority of that inability; and
- (b) cease carrying on its business as a futures broker otherwise than for the purpose of giving effect to any transaction permitted by or by virtue of its licence and entered into before the time when it became so aware unless the Authority has under subsection (2) (b) permitted the futures broker to continue carrying on its business.

(2) Where the Authority becomes aware of any inability by a futures broker to comply with the minimum financial requirements prescribed under section 24, the Authority may, whether or not the futures broker has notified the Authority as required under subsection (1) (a) —

- (a) suspend the licence of the futures broker; or
- (b) permit the futures broker to continue carrying on the business of futures trading or leveraged foreign exchange trading on such conditions, if any, as the Authority may impose.

(3) A futures broker shall be deemed to be aware of an inability to comply with the minimum financial requirements if any of its directors or officers is so aware or would, with the exercise of reasonable diligence, have been aware of such inability.

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 or leveraged foreign

Accounts to be kept by futures brokers. 9/95.

exchange trading carried on by him and as will enable true and fair profit and loss 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.

9/95.

(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 and all purchases and sales in connection with leveraged foreign exchange trading 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.

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

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

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

- (c) each futures contract received by him or made out to or by him as principal;

- (d) a copy of the document made out by him as agent of a customer as evidence of each transaction arising from leveraged foreign exchange trading; and

(e) each document received by him or made out to or by him as principal, which is evidence of a transaction arising from leveraged foreign exchange trading.

(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 15th August 1986 or the day on which the futures broker commences to carry on business as a futures broker, whichever is the 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.

9/95.

(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 not more than 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.

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(4) Notwithstanding any other provision of this Act or the Companies Act, the Authority may at any time remove an auditor appointed by a futures broker if the Authority is not satisfied with the performance of his duties as an auditor of the futures broker and require the futures broker, as soon as practicable thereafter, to appoint another auditor to replace him.

Reports by
auditor to
Authority in
certain cases.

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 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 the Authority 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.

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 —

Power of
auditors
appointed
by Authority.

- (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 a Futures 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 a Futures 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 a Futures Exchange or a clearing house fails, without reasonable excuse, 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.

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 —

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

- (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.

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

Futures Exchange may impose additional obligations on members.

- (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. 9/95.

(2) Every futures trading adviser and futures pool operator shall make full and complete disclosure to their subscribers, customers or participants of all open futures market positions and all open positions in foreign exchange trading and leveraged foreign exchange trading 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, directly or indirectly.

(3) Every futures pool operator shall furnish to each participant in his pool operations —

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

(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 subsection (2) or (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.

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(6) The provisions of this Part relating to the appointment of an auditor whether by the Authority or otherwise, removal of an auditor by the Authority, and powers and duties of an auditor and the filing of an auditor's report shall, with the necessary modifications, 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 a Futures 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 a Futures 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).

(2) A Futures 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 referred to in subsection (1).

(3) If an auditor in the course of the performance of his duties as an auditor of a Futures 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.

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

(5) 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 a Futures 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.

Defamation. **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 —

- (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

Segregation
of customer's
funds by
futures
broker.
9/95.

37.—(1) Subject to this section, every futures broker —

- (a) shall treat and deal with all moneys, securities or property received by him from a customer as belonging to that customer;
- (b) shall account in a separate trust account, designated or evidenced as such, for all the moneys, securities or property received from the customer or accruing to the customer pursuant to paragraph (a); and
- (c) shall not commingle such moneys, securities 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.

9/95. (2) Notwithstanding subsection (1), the moneys, 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 —

Cap. 19.
Cap. 186. (a) a bank licensed under the Banking Act or a merchant bank approved under the Monetary Authority of Singapore Act;

- (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 ^{9/95.} 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 —
 - (i) dealings in futures contracts; or
 - (ii) dealings in leveraged foreign exchange trading,
effected by the broker on the instructions, or on behalf, as the case may be, of a customer of the futures broker;
- (c) defraying brokerage and other proper charges incurred in respect of dealings in futures contracts or leveraged foreign exchange trading transactions effected by the futures broker on the instructions, or on behalf, as the case may be, 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 ^{9/95.} class of futures brokers or any transaction or class of

transactions relating to trading in futures contracts or leveraged foreign exchange trading from the requirements in subsection (1) subject to such terms and conditions as in the opinion of the Authority provides reasonable protection for customers.

9/95.

(6) Moneys, 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 directly in connection with trading in futures contracts or leveraged foreign exchange trading carried out on behalf of that customer.

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

(8) Nothing in this Act or any written law shall prevent a Futures Exchange or a clearing house, with the approval of the Authority, from using the moneys, 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 moneys, securities or property in a trust account might jeopardise the financial integrity of the Exchange or the clearing house.

9/95.

(9) For the purposes of this section, “customer” means a person on behalf of whom the futures broker deals, or from whom the futures broker accepts instructions to deal, in futures contracts or leveraged foreign exchange trading, but does not include —

(a) the futures broker itself with respect to dealings for the proprietary account of the futures broker;

- (b) a director, officer, employee or futures broker's representative of the futures broker; or
- (c) a related corporation of the futures broker with respect to instructions accepted to deal for an account belonging to and wholly for the benefit of that related corporation.

37A.—(1) No futures broker shall knowingly buy any futures contract for its own account, an account belonging to a connected person or for an account in which it has an interest (including any account over which it has discretion) when that futures broker has received any order to buy any futures contract of the same type for any other person at the prevailing market price or at the same price and has not executed that order, except in accordance with the business rules and practices of a Futures Exchange or a futures market. Front-running. 9/95.

(2) No futures broker shall knowingly sell any futures contract for its own account, an account belonging to a connected person or for an account in which it has an interest (including any account over which it has discretion) when that futures broker has received any order to sell any futures contract of the same type for any other person at the prevailing market price or at the same price and has not executed that order, except in accordance with the business rules and practices of a Futures Exchange or a futures market. 9/95.

37B. No futures broker shall knowingly enter into a transaction to buy from or sell to its customer any futures contract for its own account, an account of a connected person or for an account in which it has an interest (including any account over which it has discretion), except with the customer's prior consent and in accordance with the business rules and practices of a Futures Exchange or a futures market. Trading against customer. 9/95.

37C. No futures broker shall knowingly fill or execute a customer's order for the purchase or sale of a futures contract on a futures market, by offsetting against the order or orders of any other person, without effecting such a purchase or sale of the futures contract on the trading floor or electronic futures trading system and in accordance with the business rules and practices of a Futures Exchange or a futures market. Cross-trading. 9/95.

Dealings by directors, officers or employees of holders of licences.
9/95.

37D. A futures broker, a futures trading adviser or a futures pool operator shall not give unsecured credit to any director, officer or employee of that futures broker, futures trading adviser or futures pool operator or to a person who, to his knowledge, is a connected person of such director, officer or employee if —

- (a) the unsecured credit is given for the purpose of enabling or assisting the person to whom the credit is given for the purpose of trading in futures contracts, foreign exchange trading or leveraged foreign exchange trading; or
- (b) the person giving the unsecured credit knows or has reason to believe that the unsecured credit will be used for the purpose of trading in futures contracts, foreign exchange trading or leveraged foreign exchange trading.

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

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 moneys, securities or other property received by a futures pool operator from existing or prospective pool 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.
9/95.

39.—(1) No futures broker shall open a futures trading account or leveraged foreign exchange trading account for a customer unless he —

- (a) 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

- (b) receives from the customer an acknowledgment signed and dated by the customer that he has received and understood the nature and contents of the risk 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 —

- (a) 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
- (b) receives from the prospective participant an acknowledgment signed and dated by him that he has received and understood the nature and contents of the risk 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 foreign exchange trading account or guiding the client's futures trading account or foreign exchange trading by means of a systematic programme that recommends specific transactions unless at or before the time he engages in the solicitation or enters into the agreement (whichever is the earlier) the futures trading adviser — ^{9/95.}

- (a) 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
- (b) receives from the prospective client an acknowledgment signed and dated by him that he has received and understood the nature and contents of the risk 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 moneys, securities or other property in the futures trading adviser's name to purchase, margin, guarantee or secure any interest ^{9/95.}

of the client in a futures contract or a transaction in foreign exchange trading or leveraged foreign exchange trading.

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

Control over
Futures
Exchange in
acquisition of
shares in
corporation.
9/95.

39A.—(1) No Futures Exchange shall, without the prior approval of the Authority, enter into an agreement to acquire the share capital of any corporation if the result of the acquisition is that the Exchange will acquire or hold, directly or indirectly, an interest of 20% or more of the share capital of that corporation.

9/95.

(2) The Authority may grant its approval under subsection (1) with or without conditions or may refuse to grant its approval.

9/95.

(3) A Futures Exchange that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Penalties.

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, where no penalty is expressly provided, to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

PART VI

POWERS OF AUTHORITY

Emergency
powers.

41.—(1) Whenever the Authority has reason to believe that an emergency exists, the Authority may direct a Futures Exchange or a clearing house to take such action as it 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 —

- (a) terminating or suspending trading on a Futures 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 a Futures Exchange,

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

(2) Where a Futures 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 the Authority 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 a Futures 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, a Futures 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, a Futures 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.

Fixing of
position and
trading limits
in futures
contracts.

42.—(1) For the purpose of diminishing or eliminating, or preventing excessive speculation in any commodity under a futures contract, the Authority or a Futures 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.

(2) In determining whether a person has exceeded such limits, the positions held and trading done by any person, 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, 2 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, under a futures contract on or subject to the business rules of the futures market, 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 a Futures 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 a Futures

Exchange, with the approval of the Authority, with respect to that futures contract.

(6) Nothing in this section shall preclude the Authority or a Futures 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.

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

Production of records, etc., by Futures Exchange, clearing house, futures broker, etc. 9/95.

(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, foreign exchange trading or leveraged foreign exchange trading;

(b) collect and furnish any returns; and

(c) provide any information relating to its or his business, or any trading in futures contracts, foreign exchange trading or leveraged foreign exchange trading, 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 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.

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 the clearing house and shall supply to any customer of any member of the Exchange or the clearing house, upon production of a written confirmation of any transaction with such member, particulars of the approximate time at which

Records of transactions on Futures Exchange or clearing house.

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 the Authority reports of transactions on the Exchange or the clearing house in such form as the Authority may prescribe.

Information to be provided by market participants. 9/95.

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

9/95.

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

Review of Futures Exchanges' disciplinary action.

46.—(1) Where a Futures 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.

(2) The Authority may review any disciplinary action taken by a Futures 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 a Futures 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 a Futures 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 provision 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.

(4) If an 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.

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

(6) Any person who fails without reasonable excuse to comply with any requirement under subsection (2) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

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.

Inspections
by Authority.

(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 fails, without reasonable excuse, 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.

Power to
issue
directions.
9/95.

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

(a) direct the Exchange, clearing house or person to comply with that provision or to cease contravention of that provision; or

(b) direct the Exchange, clearing house or person to desist from restraining trading in futures contracts or leveraged foreign exchange trading, and the Exchange, clearing house or person shall comply with the direction.

(2) A Futures 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 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) A Futures 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

FIDELITY FUNDS

49A.—(1) A Futures Exchange shall establish and keep a fidelity fund (referred to in this Part as a fidelity fund or fund) which shall be administered by the Exchange.

Establishment of fidelity funds.
9/95.

(2) The assets of the fidelity fund of a Futures Exchange shall be the property of the Exchange but shall be kept separate from all other property and shall be held in trust for the purposes set out in this Part.

9/95.

49B. The fidelity fund of a Futures Exchange shall consist of —

Moneys constituting fidelity fund.
9/95.

- (a) all moneys paid to the fund by the Exchange;
- (b) the interest and profits from time to time accruing from the investment of the fund;
- (c) all moneys recovered by or on behalf of the Exchange in the exercise of any right of action conferred by this Part; and
- (d) all other moneys lawfully paid into the fund.

49C. All moneys forming part of a fidelity fund shall, pending the investment or application thereof in accordance with this Part, be paid or transferred into a bank in Singapore.

Fund to be kept in separate bank account.
9/95.

49D. Subject to this Part, there shall from time to time be paid out of the fidelity fund of a Futures Exchange as required and in such order as the Exchange considers proper —

Payments out of fidelity fund.
9/95.

- (a) the amount of all claims, including costs, allowed by the Exchange or established against the Exchange under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the Exchange of the rights, powers and authorities vested in it by this Part in relation to the fund;
- (c) the expenses incurred or involved in the administration of the fund including the salaries and wages of persons employed by the Exchange in relation thereto; and
- (d) all other moneys payable out of the fund in accordance with the provisions of this Act.

Accounts of
fund.
9/95.

49E.—(1) A Futures Exchange shall establish and keep proper accounts of its fidelity fund and shall, before 31st March in each year, cause a balance-sheet in respect of such accounts to be made out as at the preceding 31st December.

9/95.

(2) The Futures Exchange shall appoint an auditor to audit the accounts of the fidelity fund.

9/95.

(3) The auditor appointed by the Futures Exchange shall regularly and fully audit the accounts of the fidelity fund and shall audit each balance-sheet and cause it to be laid before the Exchange not later than 3 months after the balance-sheet was made out.

Fidelity fund
to consist of
amount of
\$5 million.
9/95.

49F.—(1) The fidelity fund of a Futures Exchange shall consist of an amount of not less than \$5 million, or such other sum as may by order be determined by the Minister from time to time, to be paid to the credit of the fund on the establishment of the Exchange under this Act or any time after its establishment as determined by the Minister.

9/95.

(2) The fidelity fund shall be increased by an annual payment into the fund of a sum that is equal to 10% or more of the net income of a Futures Exchange for any one financial year, but the Minister may, after consultation with the Exchange, increase that percentage.

49G. If the fidelity fund is reduced below the sum of \$5 million or such other sum as the Minister may, by order, prescribe, the Futures Exchange shall take steps to make up the deficiency by transferring an amount that is equal to the deficiency from other funds of the Exchange to the fidelity fund.

Provisions
if fund is
reduced
below
\$5 million.
9/95.

49H. Any moneys in a fidelity fund that are not immediately required for its purposes may be invested by the Futures Exchange in any manner in which trustees are for the time being authorised by law to invest trust funds.

Investment
of
fund.
9/95.

49I.—(1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating any person, other than an accredited investor, who suffers pecuniary loss because of a defalcation committed in the course of, or in connection with, the trading of a futures contract which is cleared or to be cleared by a clearing house or a Futures Exchange in Singapore by a member of a Futures Exchange or by any director, officer, futures broker's representative or employee, as the case may be, of the member of a Futures Exchange in relation to any money or other property which, after 1st April 1995 —

Application
of fund.
9/95.

(a) was entrusted to or received by that member or by any of its directors, officers, futures broker's representatives or employees for or on behalf of any other person; or

(b) was entrusted to or received by that member either as the sole trustee or trustees or as trustee or trustees with any other person or persons, or by any of its directors, officers, futures broker's representatives or employees as trustee or trustees or for or on behalf of the trustees of that money or property.

(2) Except as otherwise provided in this section, the total amount that may be paid under this Part to all persons eligible to claim compensation and who suffer loss through defalcations by a member of a Futures Exchange or through defalcations by any of the member's directors, officers, futures broker's representatives or employees shall not, in any event, exceed in respect of that member the sum of \$500,000, but, for the purposes of this subsection, any amount paid from a fidelity fund shall, to the extent to which

9/95.

the fund is subsequently reimbursed therefor, be disregarded.

9/95. (3) For the purposes of this section, “director” or “officer”, in relation to a member of a Futures Exchange, includes a person who has been, but at the time of any defalcation in question has ceased to be, a director or an officer of the member if, at the time of the defalcation, the person claiming compensation has reasonable grounds for believing that person to be a director or an officer of the member.

9/95. (4) Nothing in this Part shall be construed as to allow a person to claim compensation against the fidelity fund of a Futures Exchange if —

(a) the person has suffered pecuniary loss because of a defalcation committed by a member of the Exchange or by any director, officer, futures broker’s representative or employee of the member; and

(b) such defalcation is in respect of moneys deposited by that person with the futures broker or moneys belonging to that person held by that futures broker, in connection with the trading of a contract which is not a futures contract that is cleared or to be cleared by a clearing house or a Futures Exchange in Singapore.

Claims
against
fund.
9/95.

49J.—(1) Subject to this Part, every person, other than an accredited investor who suffers pecuniary loss as provided in section 49I (1), shall be entitled to claim compensation from the fidelity fund and to take proceedings in the High Court as provided in this Act against the Futures Exchange to establish such claim.

9/95. (2) Subject to subsection (3), a person shall in no case have any claim against the fidelity fund in respect of a defalcation in respect of money or other property which prior to the commission of the defalcation had, in the due course of the administration of a trust, ceased to be under the sole control of the director or directors of the member of the Futures Exchange.

9/95. (3) Subject to this Part, the amount which any claimant shall be entitled to claim as compensation from a fidelity

fund shall be 75% of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of the loss; but in any event the maximum amount payable to each claimant to satisfy any claim shall not exceed \$100,000.

49K.—(1) A Futures Exchange may cause to be published in a daily newspaper published and circulating generally in Singapore a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than 3 months after the date of publication, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.

Notice calling for claims against fund. 9/95.

(2) A claim for compensation from a fidelity fund in respect of a defalcation shall be made in writing to the Futures Exchange —

9/95.

(a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or

(b) where no such notice has been published, within 6 months after the claimant became aware of the defalcation.

(3) Any claim which is not made in accordance with subsection (2) shall be barred unless the Futures Exchange otherwise allows.

9/95.

(4) No action for damages shall lie against a Futures Exchange or against any member or employee of the Exchange by reason of any notice published in good faith and without malice for the purposes of this section.

9/95.

49L.—(1) A Futures Exchange may, subject to this Part, allow and settle any proper claim for compensation from a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.

Power of Futures Exchange to settle claims. 9/95.

(2) Subject to subsection (3), a person shall not commence proceedings under this Part against a Futures Exchange without the consent of the Exchange unless —

9/95.

(a) the Exchange has disallowed his claim; and

(b) the claimant has exhausted all relevant rights of action and other legal remedies for recovery of the money or other property, in respect of which the defalcation was committed, available against a member of the Exchange in relation to whom or to which the claim arose and all other persons liable in respect of the loss suffered by the claimant.

9/95. (3) A person who has been refused consent by a Futures Exchange may apply for leave to a Judge of the High Court in chambers who may make such order in the matter as he thinks fit.

9/95. (4) A Futures Exchange after disallowing (whether wholly or partly) any claim for compensation from a fidelity fund shall serve notice of such disallowance in the prescribed form on the claimant or his solicitor.

9/95. (5) No proceedings against a Futures Exchange in respect of a claim which has been disallowed by the Exchange shall be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).

9/95. (6) In any proceedings brought to establish a claim, evidence of any admission or confession by, or other evidence which would be admissible against, the member of a Futures Exchange or other person by whom it is alleged a defalcation was committed shall be admissible to prove the commission of the defalcation, notwithstanding that the member or other person is not the defendant in or a party to those proceedings, and all defences which would have been available to that member or person shall be available to the Exchange.

9/95. (7) A Futures Exchange or, where proceedings are brought to establish a claim, the High Court, if satisfied that the defalcation on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the defalcation has not been convicted or prosecuted therefor or that the evidence on which the Exchange or the High Court, as the case may be, acts would not be sufficient to establish the guilt of that person upon a criminal trial in respect of the defalcation.

49M. A Futures Exchange may, at any time and from time to time, require any person to produce and deliver any contract notes, documents or statements of evidence necessary to support any claim made or necessary for the purpose either of exercising its rights against a member of a Futures Exchange or the directors of that member or any other person concerned or of enabling criminal proceedings to be taken against any person in respect of a defalcation, and in default of delivery of any such contracts, documents or statements of evidence by such first-mentioned person, the Exchange may disallow any claim by him under this Part.

Power of Futures Exchange to require production of evidence. 9/95.

49N. On payment out of a fidelity fund of any moneys in respect of any claim under this Part, the Futures Exchange shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by him by reason of the defalcation on which the claim was based.

Subrogation of Futures Exchange to rights, etc., of claimant upon payment from fund. 9/95.

49O. No moneys or other property belonging to a Futures Exchange, other than the fidelity fund, shall be available for the payment of any claim under this Part whether the claim is allowed by the Exchange or is made the subject of an order of the High Court.

Payment of claims only from fund. 9/95.

49P.—(1) Where the amount at credit in a fidelity fund is insufficient to pay the whole amount of all claims against it which have been allowed or in respect of which orders of the High Court have been made, then the amount at credit in the fund shall, subject to subsection (2), be apportioned between the claimants in such manner as the Futures Exchange thinks equitable, and any such claim so far as it then remains unpaid shall be charged against future receipts of the fund and paid out of the fund when moneys are available therein.

Provision where fund insufficient to meet claims or where claims exceed total amount payable. 9/95.

(2) Where the aggregate of all claims which have been allowed or in respect of which orders of the High Court have been made in relation to defalcations by or in connection with a member of a Futures Exchange exceeds the total amount which may, pursuant to section 49I (2), be paid under this Part in respect of that member, then such total amount shall be apportioned between the claimants in such manner as the Exchange thinks equitable.

9/95.

9/95. (3) Upon payment out of the fund of such total amount in accordance with the apportionment of all such claims under subsection (2), any orders relating thereto and all other claims against the fund which may thereafter arise or be made in respect of defalcations by or in connection with that member shall be absolutely discharged.

PART VIII

OFFENCES

False trading.
9/95. **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 leveraged foreign exchange trading or a false or misleading appearance with respect to the market for, or the price of trading in, futures contracts on a futures market or leveraged foreign exchange trading.

Bucketing.
9/95. **51.**—(1) 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.

9/95. (2) No person shall knowingly execute, or hold himself out as having executed, an order to make a purchase or sale in connection with leveraged foreign exchange trading, without having effected a bona fide purchase or sale in accordance with the order.

Dissemination of information about false trading.
9/95. **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 or leveraged foreign exchange trading 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 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.

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

Employment of fraudulent or deceptive devices, etc. 9/95.

- (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.

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, or engage in leveraged foreign exchange trading, make or publish —

Fraudulently inducing trading in futures contracts. 9/95.

- (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.

Convicted persons liable to pay compensation. 9/95.

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 or in connection with leveraged foreign exchange trading 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.

(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 2 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 IX

MISCELLANEOUS

Futures contracts not gaming or wagering contracts. 9/95.

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

Secrecy.

59.—(1) Every director, officer or employee of a Futures 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 proceedings 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.

59A.—(1) The Attorney-General or any person duly authorised by him in writing may, for the purpose of an investigation into drug trafficking, apply to the High Court for an order under subsection (2) in relation to particular material or material of a particular description.

Production orders against futures brokers, etc., to produce material relating to drug trafficking. 9/95.

(2) The High Court may, if on such an application it is satisfied that the conditions referred to in subsection (3) are fulfilled, make an order that the licensee who appears to the Court to be in possession of the material to which the application relates shall —

9/95.

(a) produce the material to the Attorney-General or the person authorised by him for the Attorney-General or such person to take away; or

(b) give the Attorney-General or the person authorised by him access to the material, within a reasonable period, but not less than 7 days, as the order may specify.

(3) The conditions referred to in subsection (2) are —

9/95.

(a) (i) subject to section 59B, where the application is in respect of a foreign offence, that there is a prima facie case that a specified person has carried on or has benefited from drug trafficking; and

(ii) in any other case, that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;

- (b) that there are reasonable grounds for believing that the material to which the application relates —
- (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) that it is not contrary to the public interest to produce the material to which the application relates.

9/95. (4) A licensee who complies with an order under subsection (2) shall not be treated as being in breach of any restriction on the disclosure of information or material relating to a customer's account imposed by any rule of law, contract or otherwise.

9/95. (5) No action shall lie against a licensee who in good faith produces materials or gives access to materials relating to the account of a customer by reason of that licensee having made the production or given access in compliance with an order made against it under subsection (2) or any act done or omitted to be done in relation to the funds, investment or property in the account of that customer in consequence of the production of or access to those materials.

9/95. (6) The proceedings for an application of a production order under this section shall be heard in camera.

9/95. (7) In this section —

Cap. 84A. “drug trafficking” and “foreign offence” have the same meanings as in the Drug Trafficking (Confiscation of Benefits) Act;

“items subject to legal privilege” has the same meaning as in section 33 (2) of the Drug Trafficking (Confiscation of Benefits) Act.

9/95. (8) In this section and section 59B, “licensee” means the holder of a licence under this Act for a futures broker, a futures broker's representative, a futures trading adviser, a futures trading adviser's representative, a futures pool operator or a futures pool operator's representative.

59B.—(1) The Attorney-General or any person duly authorised by him in writing may make an application under section 59A for the purpose of assisting a foreign authority in its investigation into a foreign offence, if and only if, the conditions in subsection (2) in addition to those in section 59A (3) are fulfilled.

Production orders to assist foreign authority investigating drug trafficking. 9/95.

(2) The conditions referred to in subsection (1) are —

9/95.

- (a) there exists a mutual legal assistance treaty, memorandum of understanding or other agreement or arrangement in drug-related matters between Singapore and the foreign government and the conditions therein have been fulfilled in respect of any particular request for assistance from the Attorney-General, which conditions shall be in addition to and not in derogation of the conditions in this subsection;
- (b) the foreign authority has agreed to provide reciprocal assistance in drug-related matters to Singapore;
- (c) the foreign offence which is the subject of the investigation constitutes an offence against the law of or of a part of the State of the foreign authority and the act or omission constituting the offence or the equivalent act or omission would, if it had occurred in Singapore, have constituted an offence under the Drug Trafficking (Confiscation of Benefits) Act or the Misuse of Drugs Act;
- (d) the seriousness of the foreign offence under investigation is of sufficient gravity and the material which is the subject of the application is of sufficient importance to the investigation and whether the material could not reasonably be obtained by other means;
- (e) the assistance is not likely to prejudice the sovereignty, security or other essential interests of Singapore;
- (f) it is appropriate in the public interest to give the assistance sought;
- (g) the foreign authority undertakes that the material sought if granted by the High Court pursuant

Cap. 84A.
Cap. 185.

to a production order under this section shall not be used for any other purpose except for the investigation of the foreign offence or for the prosecution of the offender concerned and the material shall be returned to the Attorney-General upon completion of the investigation or the proceedings against the offender; and

(h) such other conditions as the Minister may prescribe.

9/95. (3) The proceedings for an application of a production order under subsection (1) shall be heard in camera.

9/95. (4) In this section —

Cap. 84A. “drug-related matters” includes the subject of mutual assistance in the investigation of drug trafficking offences within the meaning of the Drug Trafficking (Confiscation of Benefits) Act;

Cap. 185. “foreign authority” means a foreign government or an appropriate authority designated by a foreign government exercising any function corresponding to a function of the Minister in charge of the Drug Trafficking (Confiscation of Benefits) Act or the Misuse of Drugs Act;

“foreign country” means any country or territory outside Singapore;

“foreign government” means the government of a foreign country;

“foreign offence” has the same meaning as in the Drug Trafficking (Confiscation of Benefits) Act.

Offences by directors or managers.

60.—(1) Any person, being a director or manager of a Futures 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 a Futures Exchange, a clearing house, a futures broker, a futures trading adviser or 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 the 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 the 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 the 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.

False reports
to Authority
or Futures
Exchange.
9/95.

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

- (a) trading in futures contracts;
- (b) foreign exchange trading;
- (c) leveraged foreign exchange trading;
- (d) any matter or thing required by the Authority for the proper administration of this Act; or
- (e) the enforcement of the business rules of a Futures 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 a Futures 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 any regulations made thereunder, 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 a 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, a futures trading adviser or a 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 VIII 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.

Prosecution
and
composition
of offences.

(2) The Authority may, without instituting proceedings against any person for an offence under this Act or any 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 that 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.

General
penalty.

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.

Exemption.
9/95.

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 or any class of persons from all or any of the provisions of this Act or any regulations made thereunder 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.

9/95.

(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 any licence;

- (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, a foreign exchange trading or a leveraged foreign exchange trading;
- (f) prescribing the form and content of a confirmation statement of futures contracts or leveraged foreign exchange transactions 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) providing for the establishment and regulation of any electronic system by a Futures Exchange, whether by itself or in conjunction with other futures exchanges, and for the imposition and variation of such requirements, conditions or restrictions as the Authority may think fit;
- (k) the manner in which a holder of a licence conducts its dealings with its customers, conflicts of interest involving the holder of a licence and its customers, and the duties of a holder of a licence to its customers when making recommendations with respect to trading in futures contracts or leveraged foreign exchange trading;
- (l) prescribing any forms for the purposes of this Act;

- (m) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act; and
- (n) 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) Regulations made under this section 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.

9/95.

(4) Regulations made under this section 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, a futures trading adviser or a 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 or engage in leveraged foreign exchange trading for or on behalf of any other person; or
 - (iii) who is a futures broker, a futures trading adviser or a 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.

LEGISLATIVE HISTORY
FUTURES TRADING ACT
(CHAPTER 116)

1. Act 14 of 1986 — Futures Trading Act 1986

Date of First Reading	:	26.2.86 (Bill No. 2/86 published on 7.3.86)
Date of Second and Third Readings	:	31.3.86
Date of commencement	:	15.8.86

2. Act 9 of 1995 — Futures Trading (Amendment) Act 1995

Date of First Reading	:	23.1.95 (Bill No. 3/95 published on 24.1.95)
Date of Second and Third Readings	:	1.3.95
Date of commencement	:	1.4.95