



# THE STATUTES OF THE REPUBLIC OF SINGAPORE

## SECURITIES AND FUTURES ACT 2001

### 2020 REVISED EDITION

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# Securities and Futures Act 2001

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An Act relating to the regulation of activities and institutions in the securities and derivatives industry, including leveraged foreign exchange trading, of financial benchmarks and of clearing facilities, and for matters connected therewith.

*[34/2012; 4/2017]*

[1 January 2002: Parts I, VIII, IX, X and XV (except sections 314 and 342(1) and (3)), First Schedule, Second Schedule and items (4)(o) and (q) and (7)(c) of the Fourth Schedule;



1 July 2002: Parts XIII and XIV, and items (1)(a), (3)(a), (4)(a)(i), (iii) to (ix), (b), (c), (f), (g), (h), (i), (l), (m), (t) and (u), (7)(b), (12) and (13) of the Fourth Schedule;

1 October 2002: Parts II to VII, XI and XII, sections 314 and 342(1) and (3), Third Schedule and items (1)(b), (2), (3)(b), (4)(a)(ii), (d), (e), (j), (k), (n), (p), (r), (s) and (v), (5), (6), (7)(a) and (d) and (8) to (11) of the Fourth Schedule]

## PART 1

### PRELIMINARY

#### **Short title**

1. This Act is the Securities and Futures Act 2001.

#### **Interpretation**

- 2.—(1) In this Act, unless the context otherwise requires —

“administering a designated benchmark” means —

- (a) controlling the development of the definition of a designated benchmark for the purpose of determining a designated benchmark;
- (b) controlling the development of the methodology of determining a designated benchmark;
- (c) controlling the review of the definition of a designated benchmark for the purpose of determining a designated benchmark;
- (d) controlling the review of the methodology of determining a designated benchmark;
- (e) managing any arrangements, processes or mechanisms for the purpose of determining a designated benchmark;

- (f) collecting, analysing or processing any information or expression of opinion for the purpose of determining a designated benchmark;
- (g) applying a formula or other methods of calculation to information or expressions of opinion in order to determine a designated benchmark; or
- (h) monitoring and conducting surveillance of any information or expressions of opinion provided for the purpose of determining a designated benchmark,

but does not include providing information in relation to a designated benchmark or any act that is necessary or incidental to providing such information;

“administering a financial benchmark” means —

- (a) controlling the development of the definition of a financial benchmark for the purpose of determining a financial benchmark;
- (b) controlling the development of the methodology of determining a financial benchmark;
- (c) controlling the review of the definition of a financial benchmark for the purpose of determining a financial benchmark;
- (d) controlling the review of the methodology of determining a financial benchmark;
- (e) managing any arrangements, processes or mechanisms for the purpose of determining a financial benchmark;
- (f) collecting, analysing or processing any information or expression of opinion for the purpose of determining a financial benchmark;
- (g) applying a formula or other methods of calculation to information or expressions of opinion in order to determine a financial benchmark; or

- (h) monitoring and conducting surveillance of any information or expressions of opinion provided for the purpose of determining a financial benchmark, but does not include providing information in relation to a financial benchmark or any act that is necessary or incidental to providing such information;
- “advising on corporate finance” has the meaning given in the Second Schedule;
- “advocate and solicitor” means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 2(1) of the Legal Profession Act 1966;
- “appointed representative”, in respect of a type of regulated activity, has the meaning given by section 99D, and “appointed representative” means an appointed representative in respect of any type of regulated activity;
- “approved clearing house” means a corporation that is approved by the Authority under section 51(1)(a) as an approved clearing house;
- “approved exchange” means a corporation that is approved by the Authority under section 9(1)(a) as an approved exchange;
- “approved holding company” means a corporation that is approved by the Authority under section 81W as an approved holding company;
- “auditor” means a public accountant who is registered or deemed to be registered under the Accountants Act 2004 and, in Division 1 of Part 13, when used in relation to an entity not being a company, includes —
- (a) a person who is duly registered, licensed, approved or otherwise authorised to practise as an auditor (such practice to include the issue of any opinion, report or other document on the audit of any financial statement) —
    - (i) under the laws of the place where the entity is formed or constituted; or

(ii) under the laws of the place of his or her practice, if the auditing standards that are or will be applied to the financial statements of the entity are —

(A) auditing standards commonly applied in that place; or

(B) international auditing standards (by whatever name called); or

(b) such other person as the Authority may approve in any particular case to be an auditor for such entity;

“authorised benchmark administrator” means a corporation that is authorised by the Authority under section 123F(1) as an authorised benchmark administrator;

“authorised benchmark submitter” means a corporation that is authorised by the Authority under section 123ZE(1) as an authorised benchmark submitter;

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act 1970;

“book” includes any record, register, document or other record of information, and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or in any other electronic form or otherwise;

“business rules”, in relation to an approved holding company, an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house, means the rules, regulations, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of —

(a) the approved holding company, approved exchange, recognised market operator, approved clearing house or recognised clearing house and its members, or the

licensed trade repository or licensed foreign trade repository and its participants; and

(b) other persons in relation to it,

whether or not those rules, regulations, by-laws or similar body of statements are made by the approved holding company, approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house or recognised clearing house or are contained in its constituent documents; but does not include the listing rules of an approved exchange or a recognised market operator (which is an overseas exchange);

“business trust” has the meaning given by section 2 of the Business Trusts Act 2004;

“capital markets products” means any securities, units in a collective investment scheme, derivatives contracts, spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, and such other products as the Authority may prescribe as capital markets products;

“capital markets services licence” means a licence that is granted by the Authority under section 86 to a person to carry on a business in any regulated activity;

“chairperson” means a chairperson of a board of directors;

“chief executive officer”, in relation to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, an authorised benchmark administrator, an authorised benchmark submitter, a designated benchmark submitter or any other corporation (called in this definition a relevant person) means any person, by whatever name called, who is —

(a) in the direct employment of, or acting for or by arrangement with, the relevant person; and

- (b) principally responsible for the management and conduct of the business of the relevant person in Singapore;

“clearing facility” has the meaning given in Part 2 of the First Schedule;

“clearing or settlement” has the meaning given in Part 2 of the First Schedule;

“closed-end fund” means an arrangement referred to in paragraph (a) or (b) of the definition of “collective investment scheme” under which units that are issued are exclusively or primarily non-redeemable at the election of the holders of units, but does not include —

- (a) an arrangement mentioned in paragraph (a) of that definition —

- (i) which is a trust;

- (ii) which invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

- (iii) all or any units of which are listed for quotation on an approved exchange;

- (aa) an arrangement mentioned in paragraph (a) of that definition which —

- (i) has all of the following characteristics:

- (A) the arrangement is constituted in the form of an entity, a sub-fund or as a trust on or after 1 July 2013;

- (B) under the investment policy of the arrangement, investments are made for the purpose of giving participants in the arrangement the benefit of the results of the investments of the arrangement;

- (C) the arrangement does not carry on any business other than investment business and does not carry on any activity other than any activity that is solely incidental to the investment business; and
- (ii) has at least one of the following characteristics:
- (A) the investment policy of the arrangement is clearly set out in a document that is provided to each participant in the arrangement before, or at the time, the participant first invests in the arrangement;
  - (B) the entity, sub-fund or trust of which the arrangement is constituted is contractually bound to every participant in the arrangement to comply with the investment policy of the arrangement, as may be amended from time to time;
  - (C) the investment policy of the arrangement sets out the types of property which the arrangement is authorised to invest in, and the investment guidelines or restrictions that apply to the arrangement; or
- (b) an arrangement referred to in paragraph (a) of that definition which is, or which belongs to a class or description of arrangements which is, specified by the Authority, by notification in the *Gazette*, to be an arrangement that is not a closed-end fund, or a class or description of arrangements that are not closed-end funds, as the case may be;
- “Code on Collective Investment Schemes” means the Code on Collective Investment Schemes referred to in section 284 which is issued by the Authority under section 321(1);

“collective investment scheme” means —

- (a) an arrangement in respect of any property —
  - (i) under which the participants do not have day-to-day control over the management of the property, whether or not the participants have the right to be consulted or to give directions in respect of such management;
  - (ii) under which either or both of the following characteristics are present:
    - (A) the property is managed as a whole by or on behalf of a manager;
    - (B) the contributions of the participants, and the profits or income out of which payments are to be made to the participants, are pooled; and
  - (iii) under which either or both of the following characteristics are present:
    - (A) the effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —
      - (AA) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property; or
      - (AB) to receive sums paid out of such profits, income, or other payments or returns;



(B) the purpose, purported purpose or purported effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —

(BA) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property; or

(BB) to receive sums paid out of such profits, income, or other payments or returns,

whether or not —

(BC) the arrangement provides for the participants to receive any benefit other than those set out in sub-paragraph (BA) or (BB) in the event that the purpose, purported purpose or purported effect is not realised; or

(BD) the purpose, purported purpose or purported effect is realised; or

(b) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice in the *Gazette*,

but does not include —

(c) an arrangement operated by a person otherwise than by way of business;

- (d) an arrangement under which each of the participants carries on a business other than investment business and enters into the arrangement solely incidental to that other business;
- (e) an arrangement under which each of the participants is a related corporation of the manager;
- (f) an arrangement made by or on behalf of an entity solely for the benefit of persons, each of whom is —
  - (i) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of that entity or, where that entity is a corporation, a related corporation of that entity; or
  - (ii) a spouse, widow or widower, or a child, adopted child or stepchild below 18 years of age, of such director or equivalent person, former director or equivalent person, employee or former employee;
- (g) an arrangement made by or on behalf of 2 or more entities solely for the benefit of persons, each of whom is —
  - (i) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of any of those entities or, where any of those entities is a corporation, a related corporation of the entity which is a corporation; or
  - (ii) a spouse, widow or widower, or a child, adopted child or stepchild below 18 years of age, of such director or equivalent person, former director or equivalent person, employee or former employee;
- (h) a franchise;

- (i) an arrangement under which money received by an advocate and solicitor from his or her client, whether as a stakeholder or otherwise, acting in his or her professional capacity in the ordinary course of his or her practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions;
- (j) an arrangement made by any co-operative society registered under the Co-operative Societies Act 1979 in accordance with the objects thereof solely for the benefit of its members;
- (k) an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act 1971;
- (l) an arrangement arising out of a life policy within the meaning of the Insurance Act 1966;
- (m) a closed-end fund constituted either as an entity, a sub-fund or a trust;
- (n) an arrangement under which the whole amount of each participant's contribution is a deposit as defined in section 4B of the Banking Act 1970;
- (o) an arrangement of which —
  - (i) the predominant purpose is to enable the participants to share in the use or enjoyment of the property or to make its use or enjoyment available gratuitously to others; and
  - (ii) the property does not consist of any of the following:
    - (A) any currency of any country or territory;
    - (B) any capital markets products;
    - (C) any policy as defined in the First Schedule to the Insurance Act 1966;

- (D) any deposit as defined in section 4B of the Banking Act 1970;
- (E) any credit facilities as defined in section 2(1) of the Banking Act 1970;
- (p) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as not constituting a collective investment scheme by notice in the *Gazette*;

“commodity” means —

- (a) any produce, item, goods or article;
- (b) any index, right or interest in any produce, item, goods or article; or
- (c) any index, right, interest, tangible property or intangible property of any nature that is, or belongs to a class of indices, rights, interests, tangible properties or intangible properties that is, prescribed for the purposes of this definition,

but does not include —

- (d) any produce, item, goods or article that is, or that belongs to a class of produce, items, goods or articles that is, prescribed not to be a commodity for the purposes of this definition; or
- (e) any index, right or interest in any produce, item, goods or article that is, or that belongs to a class of indices, rights or interests that is, prescribed not to be a commodity for the purposes of this definition;

“company” has the meaning given by section 4(1) of the Companies Act 1967;

“connected person”, in relation to —

- (a) an individual, means —
  - (i) the individual’s spouse, son, adopted son, stepson, daughter, adopted daughter, stepdaughter, father, stepfather, mother,

stepmother, brother, stepbrother, sister or stepsister; and

- (ii) a firm, a limited liability partnership 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, limited liability partnership or corporation, whether such control is exercised individually or jointly; or

- (b) a firm, a limited liability partnership or a corporation, means another firm, limited liability partnership or corporation in which the firstmentioned firm, limited liability partnership or corporation has control of not less than 20% of the voting power in that other firm, limited liability partnership or corporation,

and a reference in this Act to a person connected to another person is to be construed accordingly;

“corporation” has the meaning given by section 4(1) of the Companies Act 1967;

“custodian”, in relation to a collective investment scheme constituted as a VCC or sub-fund, means an entity to which the assets of the scheme are entrusted for safekeeping;

“customer” means —

- (a) in relation to a holder of a capital markets services licence —

- (i) for the purposes of Parts 4, 6, 7 and 15, a person on whose behalf the holder carries on or will carry on any regulated activity; or

- (ii) for the purposes of Part 5 —

- (A) a person on whose behalf the holder carries on or will carry on any regulated activity; or

- (B) any other person with whom the holder, as principal, enters or will enter into

transactions for the sale or purchase of capital markets products,

but does not include such person or class of persons as may be prescribed for the purposes of this sub-paragraph; or

- (b) for the purposes of Part 3 and the definition of “user”, a person on whose behalf a member of an approved exchange, an approved clearing house, a recognised clearing house or a recognised market operator (as the case may be) carries on any activity regulated under this Act, but does not include —
- (i) the member, with respect to dealings for the member’s own account;
  - (ii) any officer, director, employee or representative of the member; or
  - (iii) a related corporation of the member, with respect to accepted instructions to deal for an account belonging to, and maintained wholly for the benefit of, that related corporation;

“dealing in capital markets products” has the meaning given in the Second Schedule;

“debenture” includes —

- (a) any debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a corporation or any other entity, whether constituting a charge or not, on the assets of the issuer;
- (b) any debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a trustee-manager of a business trust in its capacity as trustee-manager of the business trust, or a trustee of a real estate investment trust in its capacity as trustee of the real estate investment trust, whether constituting a charge or not, on the assets of the business trust or real estate investment trust; or

- (c) such other product or class of products as the Authority may prescribe,

but does not include —

- (d) a cheque, letter of credit, order for the payment of money or bill of exchange; or
- (e) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made under that provision provide that the word “debenture” does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

“defalcation” means misapplication, including misappropriation, of any property;

“derivative”, in relation to a unit in a business trust, has the meaning given by section 2 of the Business Trusts Act 2004;

“derivatives contract” means —

- (a) any contract or arrangement under which —
  - (i) a party to the contract or arrangement is required to, or may be required to, discharge all or any of its obligations under the contract or arrangement at some future time; and
  - (ii) the value of the contract or arrangement is determined (whether directly or indirectly, or whether wholly or in part) by reference to, is derived from, or varies by reference to, either of the following:
    - (A) the value or amount of one or more underlying things;
    - (B) fluctuations in the values or amounts of one or more underlying things; or

- (b) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed to be a derivatives contract,

but does not include —

- (c) securities;
- (d) any unit in a collective investment scheme;
- (e) a spot contract;
- (f) a deposit as defined in section 4B of the Banking Act 1970, where the deposit is accepted by a bank or merchant bank licensed under that Act;
- (g) a deposit as defined in section 2 of the Finance Companies Act 1967, where the deposit is accepted by a finance company as defined in that section of that Act;
- (h) any contract of insurance in relation to any class of insurance business specified in section 3(1) of the Insurance Act 1966; or
- (i) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed not to be a derivatives contract;

“designated benchmark” means a financial benchmark that is designated by the Authority under section 123B to be a designated benchmark;

“designated benchmark submitter” means a corporation that is designated by the Authority under section 123ZI(1) to be a designated benchmark submitter;

“director” has the meaning given by section 4(1) of the Companies Act 1967;

“entity” includes a corporation, an unincorporated association, a partnership and the government of any state, but does not include a trust;



“exchange-traded derivatives contract” means a derivatives contract —

- (a) that is executed on an organised market and is or will be cleared or settled by a clearing facility under an arrangement, process, mechanism or service by which the parties to the derivatives contract substitute or will substitute, through novation or otherwise, the credit of the clearing facility for the credit of the parties to the derivatives contract; and
- (b) the contractual terms (other than price) of which —
  - (i) are in the same form as the contractual terms of other derivatives contracts of the same type that are executed on the organised market on which the derivatives contract is executed; and
  - (ii) conform to a standard that is provided under the business rules or practices of the organised market on which the derivatives contract is executed,

but does not include —

- (c) any contract under which every contractual term can be negotiated; or
- (d) any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed not to be an exchange-traded derivatives contract;

“executive officer”, in relation to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, an authorised benchmark administrator, an authorised benchmark submitter, a designated benchmark submitter or any other corporation (called in this definition a relevant person), means any person, by whatever name called, who is —

- (a) in the direct employment of, or acting for or by arrangement with, the relevant person; and
- (b) concerned with or takes part in the management of the relevant person on a day-to-day basis;

“exempt benchmark administrator” means a person who is exempted under section 123K(1) from the requirement to be an authorised benchmark administrator;

“exempt benchmark submitter” means a person who is exempted under section 123ZH(1) from the requirement to be an authorised benchmark submitter;

“exempt person” means a person who is exempted under section 99;

“financial benchmark” means —

- (a) any price, rate, index or value that is —
  - (i) determined periodically by the application (whether direct or indirect) of a formula or any other method of calculation to information or expressions of opinion concerning transactions in, or the state of, the market in respect of one or more underlying things;
  - (ii) made available to the public (whether free of charge or for payment); and
  - (iii) used for reference —
    - (A) to determine the interest payable or other sums due on deposits or credit facilities;
    - (B) to determine the price or value of any investment product as defined in section 2(1) of the Financial Advisers Act 2001; or
    - (C) to measure the performance of any product offered by a person who is, or who belongs to a class of persons which

is, prescribed by regulations made under section 341; or

- (b) such other price, rate, index or value as may be prescribed by regulations made under section 341 as a financial benchmark,

but does not include —

- (c) a price, rate, index or value determined by, or on behalf of, the Government or a statutory body established under any Act, unless that price, rate, index or value is prescribed as a financial benchmark;
- (d) a price, rate, index or value determined by a person which is intended to be for the person's exclusive use in transactions or agreements entered into, or to be entered into, by the person, unless that price, rate, index or value is prescribed as a financial benchmark;
- (e) the price of a capital markets product; or
- (f) such other price, rate, index or value as may be prescribed by regulations made under section 341 as not being a financial benchmark;

“financial instrument” includes any currency, currency index, interest rate, interest rate instrument, interest rate index, securities, securities index, a group or groups of such financial instruments, and any other thing that is prescribed by the Authority by regulations made under section 341 for the purposes of this definition;

“financial year” has the meaning given by section 4(1) of the Companies Act 1967;

“firm” has the meaning given by section 2(1) of the Business Names Registration Act 2014;

“foreign company” has the meaning given by section 4(1) of the Companies Act 1967;

“franchise” means a written agreement or arrangement between 2 or more persons by which —

- (a) a party (called in this definition the franchisor) to the agreement or arrangement authorises or permits another party (called in this definition the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;
- (b) the business carried on by the franchisee or the person associated with the franchisee (as the case may be) is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;
- (c) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee's business;
- (d) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor; and
- (e) the franchisor agrees to communicate to the franchisee, or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential;

“fund management” has the meaning given in the Second Schedule;

“futures contract” means —

- (a) an exchange-traded derivatives contract under which —

- (i) one party agrees to transfer title to an underlying thing, or a specified quantity of an underlying thing, to another party at a specified future time and at a specified price payable at that future time; or
  - (ii) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of an underlying thing agreed at the time of the making of the contract and at a specified future time; or
- (b) an exchange-traded derivatives contract which is an option on an exchange-traded derivatives contract mentioned in paragraph (a);

“holding company” has the meaning given by section 5(4) of the Companies Act 1967;

“leveraged foreign exchange trading” has the meaning given in the Second Schedule;

“licensed foreign trade repository” means a corporation that has in force a foreign trade repository licence granted by the Authority under section 46E(2);

“licensed trade repository” means a corporation that has in force a trade repository licence granted by the Authority under section 46E(1);

“limited liability partnership” has the meaning given by section 2(1) of the Limited Liability Partnerships Act 2005;

“listing rules”, in relation to a corporation that establishes or operates, or proposes to establish or operate, an organised market of an approved exchange or a recognised market operator, or an overseas exchange that establishes or operates or proposes to establish or operate an organised market of a recognised market operator, means rules governing or relating to —

- (a) the admission to the official list of the corporation or overseas exchange, of corporations, governments, bodies unincorporate or other persons for the purpose of the quotation on the organised market of the corporation or overseas exchange of securities, securities-based derivatives contracts or units in a collective investment scheme issued, or made available by such corporations, governments, bodies unincorporate or other persons, or the removal from that official list and for other purposes; or
- (b) the activities or conduct of corporations, governments, bodies unincorporate and other persons who are admitted to that list,

whether those rules are made —

- (c) by the corporation or overseas exchange, or are contained in any of the constituent documents of the corporation or overseas exchange; or
- (d) by another person and adopted by the corporation or overseas exchange;

“manager”, in relation to a collective investment scheme, means a person, by whatever name called, who is responsible for managing the property of, or operating, the collective investment scheme;

“member”, in relation to an approved exchange, a recognised market operator, an approved clearing house or a recognised clearing house, means a person who holds membership of any class or description in the approved exchange, recognised market operator, approved clearing house or recognised clearing house, whether or not the person holds any share in the share capital of the approved exchange, recognised market operator, approved clearing house or recognised clearing house, as the case may be;

“newspaper” has the meaning given by section 2 of the Newspaper and Printing Presses Act 1974;

“office copy” has the meaning given by section 4(1) of the Companies Act 1967;

“officer” has the meaning given by section 4(1) of the Companies Act 1967;

“organised market” has the meaning given in the First Schedule;

“overseas exchange” means a person operating an organised market outside Singapore that is regulated by a financial services regulatory authority of a country or territory other than Singapore;

“participant” means —

- (a) for the purposes of Part 2, a person who may participate in one or more of the services provided by an approved exchange or a recognised market operator, in its capacity as an approved exchange or a recognised market operator, as the case may be;
- (aa) for the purposes of Part 2A, a person who may participate in one or more of the services provided by a licensed trade repository or licensed foreign trade repository, in its capacity as a licensed trade repository or licensed foreign trade repository, as the case may be;
- (b) for the purposes of Part 3, a person who, under the business rules of an approved clearing house or a recognised clearing house, may participate in one or more of the services provided by the approved clearing house or recognised clearing house, in its capacity as an approved clearing house or a recognised clearing house, as the case may be; or
- (c) for the purposes of any other provision of this Act, a person who participates in a collective investment scheme by way of owning one or more units in a collective investment scheme;

“partner” and “manager”, in relation to a limited liability partnership, have the respective meanings given by section 2(1) of the Limited Liability Partnerships Act 2005;

“prescribed written law” means this Act or any of the following written laws:

- (a) Banking Act 1970;
- (b) Finance Companies Act 1967;
- (c) Financial Advisers Act 2001;
- (d) Insurance Act 1966;
- (e) Monetary Authority of Singapore Act 1970;
- (f) Payment Services Act 2019;
- (g) such other written law as the Authority may prescribe;

“principal”, in relation to a representative, means a person whom the representative is in the direct employment of, is acting for or is acting by arrangement with, and on behalf of whom the representative carries or will carry out any regulated activity;

“product financing” has the meaning given in the Second Schedule;

“providing credit rating services” has the meaning given in the Second Schedule;

“providing custodial services” has the meaning given in the Second Schedule;

“providing information in relation to a designated benchmark” means providing any information or expression of opinion —

- (a) to, or for the purpose of passing the information or expression of opinion on to, a person (A) administering a designated benchmark; and
- (b) that enables A to determine that designated benchmark;



“providing information in relation to a financial benchmark” means providing any information or expression of opinion —

- (a) to, or for the purpose of passing the information or expression of opinion on to, a person (A) administering a financial benchmark; and
- (b) that enables A to determine that financial benchmark;

“provisional representative”, in respect of a type of regulated activity, has the meaning given to that expression by section 99E, and “provisional representative” means a provisional representative in respect of any type of regulated activity;

“public company” has the meaning given by section 4(1) of the Companies Act 1967;

“public register of representatives” means the register of that name under section 99C(3);

“quote” means to display or provide, on an organised market of an approved exchange or a recognised market operator, information concerning the particular prices or particular consideration at which offers or invitations to sell, purchase or exchange securities, securities-based derivatives contracts or units in a collective investment scheme are made on that organised market, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities, securities-based derivatives contracts or units in a collective investment scheme;

“real estate investment trust”, except in Division 3 of Part 7, means a collective investment scheme —

- (a) that is authorised under section 286 or recognised under section 287;
- (b) that is a trust;
- (c) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and

(d) all or any units of which are listed for quotation on an approved exchange;

“real estate investment trust management” has the meaning given in the Second Schedule;

“recognised business trust” means a business trust that is recognised by the Authority under section 239D(1);

“recognised clearing house” means a corporation that is recognised by the Authority under section 51(1)(b) or (2) as a recognised clearing house;

“recognised market operator” means a corporation that is recognised by the Authority under section 9(1)(b) or (2) as a recognised market operator;

“record” means information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

“registered business trust” has the meaning given by section 2 of the Business Trusts Act 2004;

“regulated activity” means an activity specified in the Second Schedule;

“related corporation” has the meaning given by section 4(1) of the Companies Act 1967;

“representative” —

(a) in relation to a person (*A*) who carries on business in any regulated activity, except for the purposes of Part 13 and except as otherwise provided for in paragraphs (b) and (c) —

(i) means a person (*B*), by whatever name called, in the direct employment of, or acting for, or by arrangement with *A*, who carries out for *A* any regulated activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not *B* is remunerated, and whether

*B*'s remuneration (if any) is by way of salary, wages, commission or otherwise; and

- (ii) includes, where *A* is a corporation, any officer of *A* who performs for *A* any regulated activity, whether or not the officer is remunerated, and whether the officer's remuneration (if any) is by way of salary, wages, commission or otherwise;
- (b) in relation to a person (*C*) that is an authorised benchmark administrator or an exempt benchmark administrator —
- (i) means a person (*D*), by whatever name called, in the direct employment of, or acting for, or by arrangement with *C*, who carries out the activity of administering a designated benchmark (other than work ordinarily performed by accountants, clerks or cashiers), whether or not *D* is remunerated, and whether *D*'s remuneration (if any) is by way of salary, wages, commission or otherwise; and
  - (ii) includes, where *C* is a corporation, any officer of *C* who performs for *C* the activity of administering a designated benchmark, whether or not the officer is remunerated, and whether the officer's remuneration (if any) is by way of salary, wages, commission or otherwise; and
- (c) in relation to a person (*E*) that is an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter —
- (i) means a person (*F*), by whatever name called, in the direct employment of, or acting for, or by arrangement with *E*, who carries out the activity of providing information in relation to a designated benchmark (other than work ordinarily performed by accountants, clerks or

cashiers), whether or not *F* is remunerated, and whether *F*'s remuneration (if any) is by way of salary, wages, commission or otherwise; and

- (ii) includes, where *E* is a corporation, any officer of *E* who performs for *E* the activity of providing information in relation to a designated benchmark, whether or not the officer is remunerated, and whether the officer's remuneration (if any) is by way of salary, wages, commission or otherwise;

“responsible person”, in relation to a collective investment scheme, means —

- (a) in the case of a scheme that is constituted as a VCC or a sub-fund — the VCC;
- (b) in the case of a scheme that is constituted as a corporation other than a VCC — the corporation; or
- (c) in the case of any other scheme — the manager for the scheme;

“securities” means —

- (a) shares, units in a business trust or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership;
- (b) debentures; or
- (c) any other product or class of products as may be prescribed,

but does not include —

- (d) any unit of a collective investment scheme;
- (e) any bill of exchange;
- (f) any certificate of deposit issued by a bank or finance company, whether situated in Singapore or elsewhere; or

(g) such other product or class of products as may be prescribed;

“securities-based derivatives contract” means any derivatives contract of which the underlying thing or any of the underlying things is a security or a securities index, but does not include any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by regulations made under section 341;

“Securities Industry Council” means the Securities Industry Council referred to in section 138;

“share” has the meaning given by section 4(1) of the Companies Act 1967;

“specified products” means securities, specified securities-based derivatives contracts or units in a collective investment scheme;

“specified securities-based derivatives contract” means a securities-based derivatives contract that is not a futures contract;

“spot contract” means a contract or an arrangement for the sale or purchase of any underlying thing at the spot price, where it is intended for a party to the contract or arrangement to take delivery of the underlying thing immediately or within a period which must not be longer than the period determined by the market convention for delivery of the underlying thing;

“spot foreign exchange contract” has the meaning given in the Second Schedule;

“sub-fund” has the meaning given by section 2(1) of the Variable Capital Companies Act 2018;

“subsidiary” has the meaning given by section 5 of the Companies Act 1967;

“substantial unitholder” —

- (a) in relation to a collective investment scheme, means a participant who has an interest or interests in one or more voting units in the scheme, the total votes attached to that unit, or those units, being not less than 5% of the total votes attached to all the voting units in the scheme; or
- (b) in relation to a business trust, means a person who has an interest or interests in one or more voting units in the business trust, the total votes attached to that unit, or those units, being not less than 5% of the total votes attached to all the voting units in the business trust;

“Take-over Code” means the Singapore Code on Take-overs and Mergers referred to in section 139 which is issued by the Authority under section 321(1);

“take-over offer” means —

- (a) an offer for the acquisition by or on behalf of a person of —
  - (i) in the case of a public company, or of a corporation all or any of the shares of which are listed for quotation on an approved exchange —
    - (A) some or all of the shares, or some or all of the shares of a particular class, in the company or corporation made to all members of the company or corporation, or where the person already holds shares in the company or corporation, made to all other members of the company or corporation; or
    - (B) all of the remaining shares in the company or corporation made to all other members of the company or corporation as a result of the person

- acquiring or consolidating effective control of that company or corporation within the meaning of the Take-over Code;
- (ii) in the case of a registered business trust, or of a business trust all or any of the units of which are listed for quotation on an approved exchange —
    - (A) some or all of the units, or some or all of the units of a particular class, in the business trust made to all unitholders of the business trust, or where the person already holds units in the business trust, made to all other unitholders of the business trust; or
    - (B) all of the remaining units in the business trust made to all other unitholders of the business trust as a result of the person acquiring or consolidating effective control of that business trust within the meaning of the Take-over Code; or
  - (iii) in the case of a collective investment scheme constituted as a unit trust and authorised under section 286, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes, and all or any of the units in which are listed for quotation on an approved exchange —
    - (A) some or all of the units, or some or all of the units of a particular class, in the scheme made to all unitholders of the scheme, or where the person already holds units in the scheme, made to all other unitholders of the scheme; or

- (B) all of the remaining units in the scheme made to all other unitholders of the scheme as a result of the person acquiring or consolidating effective control of that scheme within the meaning of the Take-over Code; or
- (b) a proposed compromise or arrangement which —
- (i) in the case of a public company, is referred to in section 210 of the Companies Act 1967; or
  - (ii) in the case of a corporation all or any of the shares of which are listed for quotation on an approved exchange, complies with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country or territory in which that corporation was incorporated,
- and which, if executed, would result in a change in effective control of the public company or corporation within the meaning of the Take-over Code;

“temporary representative”, in respect of a type of regulated activity, has the meaning given to that expression by section 99F, and “temporary representative” means a temporary representative in respect of any type of regulated activity;

“transaction information” means information relating to —

- (a) offers or invitations to enter into, purchase, sell, or exchange capital markets products;
- (b) executed transactions in capital markets products;
- (c) transactions cleared or settled by an approved clearing house or a recognised clearing house; or
- (d) transactions reported to a licensed trade repository or licensed foreign trade repository;



“treasury share” —

- (a) in relation to a company, has the meaning given by section 4(1) of the Companies Act 1967; and
- (b) in relation to a corporation (other than a company), means any share equivalent to a treasury share in a company;

“trustee-manager” —

- (a) in relation to a registered business trust, has the meaning given by section 2 of the Business Trusts Act 2004;
- (b) in relation to a business trust for which an application for registration has been made under section 4(1) of the Business Trusts Act 2004, means the company proposed to be named as the trustee-manager in the application made under that section;
- (c) in relation to a recognised business trust, means the entity which manages and operates the recognised business trust, by whatever name called and whether incorporated or not; and
- (d) in relation to a business trust for which an application for recognition has been made under section 239D(1), means the entity proposed to be managing and operating the trust, by whatever name called and whether incorporated or not;

“underlying thing” means —

- (a) in relation to a derivatives contract or a spot contract —
  - (i) a unit in a collective investment scheme;
  - (ii) a commodity;
  - (iii) a financial instrument;
  - (iv) the credit of any person; or

- (v) an arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by regulations made under section 341 to be an underlying thing in relation to a derivatives contract or a spot contract,

but does not include any arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by regulations made under section 341 not to be an underlying thing in relation to a derivatives contract or a spot contract; and

(b) in relation to a financial benchmark —

- (i) an investment product as defined in section 2(1) of the Financial Advisers Act 2001;
- (ii) a commodity;
- (iii) a financial instrument;
- (iv) any intangible property or class of intangible properties; or
- (v) any arrangement, event or transaction that is, or that belongs to a class of arrangements, events or transactions that is, prescribed by regulations made under section 341 to be an underlying thing in relation to a financial benchmark,

but does not include any arrangement, event, intangible property or transaction that is, or that belongs to a class of arrangements, events, intangible properties or transactions that is, prescribed by regulations made under section 341 not to be an underlying thing in relation to a financial benchmark;

“unit” —

- (a) in relation to a collective investment scheme, means a right or interest (however described) in a collective investment scheme (whether or not constituted as an entity), and includes an option to acquire any such right or interest in the collective investment scheme; and
- (b) in relation to a business trust, has the meaning given by section 2 of the Business Trusts Act 2004;

“unitholder” —

- (a) in relation to a collective investment scheme, means a participant of the scheme; and
- (b) in relation to a business trust, means a person who holds a unit in the business trust;

“user” means —

- (a) in relation to an approved exchange, a recognised market operator, an approved clearing house or a recognised clearing house, a person who is —
  - (i) a member of the approved exchange, recognised market operator, approved clearing house or recognised clearing house, as the case may be; or
  - (ii) a customer of a member of the approved exchange, recognised market operator, approved clearing house or recognised clearing house, as the case may be; or
- (b) in relation to a licensed trade repository or a licensed foreign trade repository, a person who is —
  - (i) a participant of the licensed trade repository or licensed foreign trade repository; or
  - (ii) a client of a participant of the licensed trade repository or licensed foreign trade repository;

“user information” means transaction information that is referable to —

- (a) a named user; or
- (b) a group of users, from which the name of a user can be directly inferred;

“VCC” means a VCC or variable capital company as defined in section 2(1) of the Variable Capital Companies Act 2018;

“voting share” has the meaning given by section 4(1) of the Companies Act 1967;

“voting unit” —

- (a) in relation to a business trust, means an issued unit in the business trust, other than —
  - (i) a unit to which in no circumstances is there attached a right to vote; or
  - (ii) a unit to which there is attached a right to vote only in one or more of the following circumstances:
    - (A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrears;
    - (B) upon a proposal to reduce the unitholders’ equity of the business trust;
    - (C) upon a proposal that affects rights attached to the unit;
    - (D) upon a proposal to wind up the business trust;
    - (E) upon a proposal for the disposal of the whole of the property, business and undertakings of the business trust;
    - (F) during the winding up of the business trust; and

(b) in relation to a collective investment scheme, means an issued unit in the scheme, other than —

(i) a unit to which in no circumstances is there attached a right to vote; or

(ii) a unit to which there is attached a right to vote only in one or more of the following circumstances:

(A) during a period in which a distribution (or part of a distribution) in respect of the unit is in arrears;

(B) upon a proposal to reduce the participants' funds of the scheme;

(C) upon a proposal that affects rights attached to the unit;

(D) upon a proposal to wind up the scheme;

(E) upon a proposal for the disposal of the whole of the property, business and undertakings of the scheme;

(F) during the winding up of the scheme.

*[2/2009; 34/2012; 29/2014; 4/2017; 44/2018; 2/2019;  
1/2020; S 376/2008; S 20/2012]*

(2) Any reference in this Act to the affairs of a corporation, unless the contrary intention appears, is to be construed as including a reference to —

(a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owned jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;

- (b) in the case of a corporation (not being a trustee corporation) that is a trustee (but without limiting paragraph (a)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;
- (c) the internal management and proceeding of the corporation;
- (d) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —
  - (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;
  - (ii) the corporation is under judicial management;
  - (iii) a compromise or an arrangement referred to in section 210 of the Companies Act 1967 or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 made between the corporation and another person or other persons is being administered; or
  - (iv) the corporation is being wound up,and without limiting sub-paragraphs (i) to (iv), any conduct of such a receiver or such a receiver and manager, or such a judicial manager, or any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;
- (e) the ownership of shares in, debentures of, units of shares in, units of debentures of, and units in a collective investment scheme issued by the corporation;
- (f) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;

- (g) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or materially to influence the policy of the corporation;
- (h) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, units of shares in, units of debentures of, or units in a collective investment scheme issued by, the corporation;
- (i) where the corporation has issued units in a collective investment scheme, any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the units in a collective investment scheme relate; or
- (j) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in paragraphs (a) to (i).

[40/2018]

(3) Where the name of a corporation referred to in this Act is changed pursuant to the Companies Act 1967, the change of name does not affect the identity of that corporation or the application of the relevant provisions of this Act or any other written law to that corporation.

(4) For the purposes of this Act, a person has a substantial shareholding in a corporation if —

- (a) the person has an interest or interests in one or more voting shares (excluding treasury shares) in the corporation; and
- (b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in the corporation.

[2/2009]

(5) For the purposes of this Act, a person has a substantial shareholding in a corporation, being a corporation the share capital of which is divided into 2 or more classes of shares, if —

- (a) the person has an interest or interests in one or more voting shares (excluding treasury shares) in one of those classes; and
- (b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in that class.

[2/2009]

(6) For the purposes of this Act, a person who has a substantial shareholding in a corporation is a substantial shareholder in that corporation.

[2/2009]

### **Associated person**

3.—(1) Unless the context otherwise requires, any reference in this Act to a person associated with another person is a reference to —

- (a) where the other person is a corporation —
  - (i) a director or secretary of the corporation;
  - (ii) a related corporation; or
  - (iii) a director or secretary of such a related corporation;
- (b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal, or express or implied —
  - (i) by reason of which either of those persons may exercise, directly or indirectly, control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the corporation;
  - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or



- (iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of such shares in accordance with the directions of the other of them, except that, in relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person;
- (c) a person with whom the other person is acting, or proposes to act, in concert in relation to the matter to which the reference relates;
- (d) where the matter to which the reference relates is a matter, other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation —
- (i) subject to subsection (2), a person who is a director of a corporation of which the other person is a director; or
  - (ii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (e) a person with whom the other person is, according to any subsidiary legislation made under this Act, to be regarded as associated in respect of the matter to which the reference relates;
- (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with

a person as referred to in paragraph (a), (b), (c), (d), (e) or (f), that last-mentioned person.

(2) Where, in any proceedings under this Act, it is alleged that a person referred to in subsection (1)(d)(i) was associated with another person at a particular time, the firstmentioned person is not considered to be so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the firstmentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person (*A*) is not taken to be associated with another person by virtue of subsection (1)(b), (c), (e) or (f) by reason only of one or more of the following:

- (a) that one of those persons (*B*) provides advice to, or acts on behalf of, *A* in the proper performance of the functions attaching to *B*'s professional capacity or to *B*'s business relationship with *A*;
- (b) that one of those persons, a customer, gives specific instructions to *A*, whose ordinary business includes dealing in capital markets products, to acquire shares on the customer's behalf in the ordinary course of that business;
- (c) that one of those persons has sent, or proposes to send, to *A* a take-over offer, or has made, or proposes to make, offers under a take-over announcement, within the meaning of the Take-over Code, in relation to shares held by *A*;
- (d) that one of those persons has appointed *A*, otherwise than for valuable consideration given by *A* or by an associate of *A*, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

[4/2017]

### **Interest in securities, securities-based derivatives contracts or units in collective investment scheme**

4.—(1) Subject to this section, a person has an interest in securities, securities-based derivatives contracts or units in a collective investment scheme, if the person has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control

over the disposal of, those securities, securities-based derivatives contracts or units in a collective investment scheme, as the case may be.

[4/2017]

(2) For the purposes of subsection (1), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) is, or is capable of being made, subject to restraint or restriction.

[4/2017]

(3) Where any property held in trust consists of or includes securities, securities-based derivatives contracts or units in a collective investment scheme, and a person knows, or has reasonable grounds for believing, that the person has an interest under the trust, the person is treated as having an interest in those securities, securities-based derivatives contracts or units in a collective investment scheme, as the case may be.

[4/2017]

(4) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if a corporation has, or is by the provisions of this section (apart from this subsection) treated as having, an interest in that security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) and —

- (a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person; or
- (b) the person has a controlling interest in the corporation.

[4/2017]

(5) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if —

- (a) a corporation has, or is by the provisions of this section (apart from this subsection) treated as having, an interest in

that security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be; and

- (b) the person, the associates of the person, or the person and the person's associates are entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the corporation.

[4/2017]

(6) For the purposes of subsection (5), a person is an associate of another person if the firstmentioned person is —

- (a) a subsidiary of that other person;
- (b) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) referred to in subsection (5); or
- (c) a corporation that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to that security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be.

[35/2014; 4/2017]

(7) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme in any one or more of the following circumstances:

- (a) where the person has entered into a contract to purchase the security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be;
- (b) where the person has a right, otherwise than by reason of having an interest under a trust, to have the security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be), transferred to the person or to the person's order, whether the right is

exercisable presently or in the future and whether on the fulfilment of a condition or not;

- (c) where the person has the right to acquire any of the following under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not:
  - (i) the security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be;
  - (ii) an interest in the security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be;
- (d) where the person is entitled, otherwise than by reason of the person having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to any of the following, as the case may be:
  - (i) the security, not being a security of which the person is a registered holder;
  - (ii) the securities-based derivatives contract, not being a contract to which the person is a party;
  - (iii) the unit in a collective investment scheme, not being a unit of which the person is a registered holder.

[4/2017]

(8) A person is treated as having an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if that security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) is held jointly by the person with another person.

[4/2017]

(9) For the purpose of determining whether a person has an interest in a security, securities-based derivatives contract or unit in a collective investment scheme, it is immaterial that the interest cannot

be related to a particular security, securities-based derivatives contract or unit in a collective investment scheme, as the case may be.

[4/2017]

(10) The following interests are to be disregarded:

- (a) an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if the interest is that of a person who holds the security, securities-based derivatives contract or unit in a collective investment scheme (as the case may be) as bare trustee;
- (b) an interest in a security, securities-based derivatives contract or unit in a collective investment scheme if —
  - (i) the interest is that of a person whose ordinary business includes the lending of money; and
  - (ii) the person holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a security, securities-based derivatives contract or unit in a collective investment scheme if that interest is an interest held by the person by reason of the person holding a prescribed office;
- (d) an interest of a company in its own securities if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G of the Companies Act 1967;
- (e) a prescribed interest in a security, securities-based derivatives contract or unit in a collective investment scheme being an interest of such person, or of the persons included in such class of persons, as may be prescribed;
- (f) for the purposes of Part 7, an interest in a securities-based derivatives contract the obligations under which are to be discharged by one party to the other at some future time by cash settlement only.

[4/2017]

(11) An interest in a security, securities-based derivatives contract or unit in a collective investment scheme is not to be disregarded by reason only of —

- (a) its remoteness;
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

[4/2017]

### **Specific classes of investors**

**4A.—**(1) Subject to subsection (2), unless the context otherwise requires —

- (a) “accredited investor” means —
  - (i) an individual —
    - (A) whose net personal assets exceed in value \$2 million (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount;
    - (B) whose financial assets (net of any related liabilities) exceed in value \$1 million (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount, where “financial asset” means —
      - (BA) a deposit as defined in section 4B of the Banking Act 1970;
      - (BB) an investment product as defined in section 2(1) of the Financial Advisers Act 2001; or
      - (BC) any other asset as may be prescribed by regulations made under section 341; or

- (C) whose income in the preceding 12 months is not less than \$300,000 (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe in place of the first amount;
  - (ii) a corporation with net assets exceeding \$10 million in value (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe, in place of the first amount, as determined by —
    - (A) the most recent audited balance sheet of the corporation; or
    - (B) where the corporation is not required to prepare audited accounts regularly, a balance sheet of the corporation certified by the corporation as giving a true and fair view of the state of affairs of the corporation as of the date of the balance sheet, which date must be within the preceding 12 months;
  - (iii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
  - (iv) such other person as the Authority may prescribe;
- (b) “expert investor” means —
- (i) a person whose business involves the acquisition and disposal, or the holding, of capital markets products, whether as principal or agent;
  - (ii) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
  - (iii) such other person as the Authority may prescribe;
- (c) “institutional investor” means —
- (i) the Government;
  - (ii) a statutory board as may be prescribed by regulations made under section 341;



- (iii) an entity that is wholly and beneficially owned, whether directly or indirectly, by a central government of a country and whose principal activity is —
  - (A) to manage its own funds;
  - (B) to manage the funds of the central government of that country (which may include the reserves of that central government and any pension or provident fund of that country); or
  - (C) to manage the funds (which may include the reserves of that central government and any pension or provident fund of that country) of another entity that is wholly and beneficially owned, whether directly or indirectly, by the central government of that country;
- (iv) any entity —
  - (A) that is wholly and beneficially owned, whether directly or indirectly, by the central government of a country; and
  - (B) whose funds are managed by an entity mentioned in sub-paragraph (iii);
- (v) a central bank in a jurisdiction other than Singapore;
- (vi) a central government in a country other than Singapore;
- (vii) an agency (of a central government in a country other than Singapore) that is incorporated or established in a country other than Singapore;
- (viii) a multilateral agency, international organisation or supranational agency as may be prescribed by regulations made under section 341;
- (ix) a bank that is licensed under the Banking Act 1970;
- (x) a merchant bank that is licensed under the Banking Act 1970;

- (xi) a finance company that is licensed under the Finance Companies Act 1967;
- (xii) a company or co-operative society that is licensed under the Insurance Act 1966 to carry on insurance business in Singapore;
- (xiii) a company licensed under the Trust Companies Act 2005;
- (xiv) a holder of a capital markets services licence;
- (xv) an approved exchange;
- (xvi) a recognised market operator;
- (xvii) an approved clearing house;
- (xviii) a recognised clearing house;
- (xix) a licensed trade repository;
- (xx) a licensed foreign trade repository;
- (xxi) an approved holding company;
- (xxii) a Depository as defined in section 81SF;
- (xxiii) an entity or a trust formed or incorporated in a jurisdiction other than Singapore, which is regulated for the carrying on of any financial activity in that jurisdiction by a public authority of that jurisdiction that exercises a function that corresponds to a regulatory function of the Authority under this Act, the Banking Act 1970, the Finance Companies Act 1967, the Monetary Authority of Singapore Act 1970, the Insurance Act 1966, the Trust Companies Act 2005 or such other Act as may be prescribed by regulations made under section 341;
- (xxiv) a pension fund, or collective investment scheme, whether constituted in Singapore or elsewhere;
- (xxv) a person (other than an individual) who carries on the business of dealing in bonds with accredited investors or expert investors;

(xxvi) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or

(xxvii) such other person as the Authority may prescribe.

[4/2017; 1/2020]

(1A) In determining the value of an individual's net personal assets for the purposes of subsection (1)(a)(i)(A), the value of the individual's primary residence —

(a) is to be calculated by deducting any outstanding amounts in respect of any credit facility that is secured by the residence from the estimated fair market value of the residence; and

(b) is taken to be the lower of the following:

(i) the value calculated under paragraph (a);

(ii) \$1 million.

[4/2017]

(2) The definitions in subsection (1) may be subject to such modifications as the Authority may prescribe for any specified provision of this Act.

### **Application**

**4B.** This Act does not apply to a person in respect of whom a transitional approval or transitional licence mentioned in section 66 of the Commodity Trading Act 1992 is in force, to the extent that the activities carried out by the person are regulated under, and authorised by, that section.

[4/2017]

## PART 2

## ORGANISED MARKETS

**Objectives of this Part**

5. The objectives of this Part are —
- (a) to promote fair, orderly and transparent markets;
  - (b) to facilitate efficient markets for the allocation of capital and the transfer of risks; and
  - (c) to reduce systemic risk.

[4/2017]

**Interpretation of this Part**

6. In this Part, unless the context otherwise requires —
- “foreign corporation” means a corporation that is formed or incorporated outside Singapore;
- “Singapore corporation” means a corporation that is formed or incorporated in Singapore.

[4/2017]

*Division 1 — Establishment of Organised Markets***Requirement for approval or recognition**

7.—(1) A person must not establish or operate an organised market, or hold itself out as operating an organised market, unless the person is —

- (a) an approved exchange; or
- (b) a recognised market operator.

[4/2017]

(2) A person must not hold itself out —

- (a) as an approved exchange, unless the person is an approved exchange; or
- (b) as a recognised market operator, unless the person is a recognised market operator.

[4/2017]

(3) Except with the written approval of the Authority, a person, other than an approved exchange or a recognised market operator, must not take or use, or have attached to or exhibited at any place —

- (a) the title or description “securities exchange”, “stock exchange”, “futures exchange” or “derivatives exchange” in any language; or
- (b) any title or description that resembles a title or description referred to in paragraph (a).

[4/2017]

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(5) Any person who contravenes subsection (2) 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 not exceeding \$2,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Despite section 337(1), the Authority may, by regulations made under section 44, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(7) The Authority may, by written notice, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 5.

[4/2017]

(8) It is not necessary to publish any exemption granted under subsection (7) in the *Gazette*.

[4/2017]

- (9) The Authority may, at any time, by written notice —
- (a) add to the conditions or restrictions mentioned in subsection (7); or
  - (b) vary or revoke any condition or restriction mentioned in that subsection.

[4/2017]

(10) Every corporation that is exempted under subsection (6) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(11) Every corporation that is exempted under subsection (7) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (9).

[4/2017]

(12) Any corporation which contravenes subsection (10) or (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Application for approval or recognition**

**8.—**(1) A Singapore corporation may apply to the Authority to be —

- (a) approved as an approved exchange; or
- (b) recognised as a recognised market operator.

[4/2017]

(2) A foreign corporation may apply to the Authority to be recognised as a recognised market operator.

[4/2017]

(3) An application made under subsection (1) or (2) must be —

- (a) made in such form and manner as the Authority may specify; and
- (b) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 44,

which must be paid in the manner specified by the Authority.

[4/2017]

(4) The Authority may require an applicant to provide the Authority with such information or documents as the Authority considers necessary in relation to the application.

[4/2017]

### **Power of Authority to approve exchanges and recognise market operators**

**9.—**(1) Where a Singapore corporation makes an application under section 8(1), the Authority may —

- (a) in the case of an application to be approved as an approved exchange, approve the Singapore corporation as an approved exchange; or
- (b) in the case of an application to be recognised as a recognised market operator, recognise the Singapore corporation as a recognised market operator.

[4/2017]

(2) Where a foreign corporation makes an application under section 8(2), the Authority may recognise the foreign corporation as a recognised market operator.

[4/2017]

(3) Despite subsection (1), the Authority may, with the consent of the applicant —

- (a) treat an application under section 8(1)(a) as an application under section 8(1)(b) if the Authority is of the opinion that the applicant would be more appropriately regulated as a recognised market operator; or
- (b) treat an application under section 8(1)(b) as an application under section 8(1)(a) if the Authority is of the opinion that the applicant would be more appropriately regulated as an approved exchange.

[4/2017]

(4) The Authority may approve a Singapore corporation as an approved exchange under subsection (1)(a), recognise a Singapore corporation as a recognised market operator under subsection (1)(b), or recognise a foreign corporation as a recognised market operator under subsection (2), subject to such conditions or restrictions of a general or specific nature as the Authority may impose by written notice, including conditions or restrictions relating to —

- (a) the activities that the corporation may undertake;
- (b) the products that may be traded on any organised market established or operated by the corporation;
- (c) the nature of the investors or participants who may use, invest in, or participate in any product traded on any organised market established or operated by the corporation; and
- (d) the financial requirements to be imposed on the corporation.

[4/2017]

(5) The Authority may, at any time, by written notice to the corporation, vary any condition or restriction or impose further conditions or restrictions.

[4/2017]

(6) An approved exchange or a recognised market operator must, for the duration of the approval or recognition, satisfy every condition or restriction that may be imposed on it under subsections (4) and (5).

[4/2017]

(7) The Authority must not approve an applicant as an approved exchange, or recognise an applicant as a recognised market operator, unless the applicant meets such requirements, including minimum financial requirements, as the Authority may prescribe by regulations made under section 44, either generally or specifically.

[4/2017]

(8) The Authority may refuse to approve a Singapore corporation as an approved exchange, or recognise a Singapore corporation or foreign corporation (as the case may be) as a recognised market operator, if —



- (a) the corporation has not provided the Authority with such information as the Authority may require, relating to —
  - (i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business; or
  - (ii) any circumstances likely to affect the corporation's manner of conducting business or operations;
- (b) any information or document provided by the corporation to the Authority is false or misleading;
- (c) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (d) execution against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) a receiver, a receiver and manager, a judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;
- (f) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;
- (g) the corporation, a substantial shareholder of the corporation or any officer of the corporation —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or

- (ii) has been convicted of an offence under this Act committed before, on or after 8 October 2018;
- (h) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any organised market;
- (i) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (j) the Authority has reason to believe that the corporation may not be able to act in the best interests of investors or its members, participants or customers, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;
- (k) the Authority is not satisfied as to —
  - (i) the financial standing of the corporation or any of its substantial shareholders; or
  - (ii) the manner in which the business of the corporation is to be conducted;
- (l) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with the establishment or operation of any organised market;
- (m) there are other circumstances that are likely to —
  - (i) lead to the improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or
  - (ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;

- (n) in the case of any organised market that the corporation operates, the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a fair, orderly and transparent organised market;
- (o) the corporation does not satisfy the criteria prescribed under section 10 to be approved as an approved exchange or recognised as a recognised market operator, as the case may be; or
- (p) the Authority is of the opinion that it would be contrary to the interests of the public to approve or recognise the corporation.

[4/2017]

(9) Subject to subsection (10), the Authority must not refuse to approve a Singapore corporation as an approved exchange, or recognise a Singapore corporation or foreign corporation (as the case may be) as a recognised market operator, under subsection (8), without giving the corporation an opportunity to be heard.

[4/2017]

(10) The Authority may refuse to approve a Singapore corporation as an approved exchange, or recognise a Singapore corporation or foreign corporation (as the case may be) as a recognised market operator, on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[4/2017]

(11) The Authority must give notice in the *Gazette* of any corporation approved as an approved exchange under subsection (1)(a) or recognised as a recognised market operator under subsection (1)(b) or (2), and such notice may include all or any of the conditions and restrictions imposed by the Authority on the corporation under subsections (4) and (5).

[4/2017]

(12) Any applicant who is aggrieved by a refusal of the Authority to approve the applicant under subsection (1)(a) or a refusal of the Authority to recognise the applicant under subsection (1)(b) or (2) may, within 30 days after the applicant is notified of the refusal, appeal to the Minister whose decision is final.

[4/2017]

(13) Any approved exchange or recognised market operator which contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **General criteria to be taken into account by Authority**

**10.**—(1) The Authority may by regulations made under section 44 prescribe the criteria that the Authority may take into account for the purposes of deciding —

- (a) whether a Singapore corporation mentioned in section 8(1) or 12(1) should be approved as an approved exchange or recognised as a recognised market operator;
- (b) whether a foreign corporation mentioned in section 8(2) should be recognised as a recognised market operator; and
- (c) whether an approved exchange or a recognised market operator that is subject to a review by the Authority under section 12(4) should be approved as an approved exchange or recognised as a recognised market operator.

[4/2017]

(2) Without affecting section 9 and subsection (1), the Authority may, for the purposes of deciding whether to recognise a foreign

corporation as a recognised market operator under section 9(2), have regard, in addition to any requirements prescribed under section 9(7) and any criteria prescribed under subsection (1), to —

- (a) whether adequate arrangements exist for cooperation between the Authority and the primary financial services regulatory authority responsible for the supervision of the foreign corporation in the country or territory in which the head office or principal place of business of the foreign corporation is situated; and
- (b) whether the foreign corporation is, in the country or territory in which the head office or principal place of business of the foreign corporation is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 5 are achieved, to the requirements and supervision to which approved exchanges and recognised market operators are subject under this Act.

[4/2017]

(3) In considering whether a foreign corporation has met the requirements mentioned in subsection (2)(b), the Authority may have regard to —

- (a) the relevant laws and practices of the country or territory in which the head office or principal place of business of the foreign corporation is situated; and
- (b) the rules and practices of the foreign corporation.

[4/2017]

### **Annual fees payable by approved exchange and recognised market operator**

**11.—**(1) Every approved exchange and every recognised market operator must pay to the Authority such annual fees as may be prescribed by regulations made under section 44 in such manner as the Authority may specify.

[4/2017]

(2) The Authority may, where it considers appropriate, refund or remit the whole or any part of any annual fee paid or payable to it.

[4/2017]

**Change in status**

**12.—**(1) A Singapore corporation that is an approved exchange or a recognised market operator may apply to the Authority to change its status in the manner mentioned in subsection (5).

[4/2017]

(2) An application under subsection (1) must be —

- (a) made in such form and manner as the Authority may specify; and
- (b) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 44, which must be paid in the manner specified by the Authority.

[4/2017]

(3) The Authority may require an applicant to provide the Authority with such information or documents as the Authority considers necessary in relation to the application.

[4/2017]

(4) The Authority may, on its own initiative, review the status of a Singapore corporation that is an approved exchange or a recognised market operator to determine whether the Singapore corporation continues to meet the requirements prescribed under section 9(7) and the criteria prescribed under section 10(1).

[4/2017]

(5) Where an application is made by a Singapore corporation under subsection (1), or where a review of the status of a Singapore corporation is conducted by the Authority under subsection (4), the Authority may —

- (a) if the Singapore corporation is an approved exchange, withdraw the approval as such and recognise the Singapore corporation as a recognised market operator under section 9(1)(b);
- (b) if the Singapore corporation is a recognised market operator, withdraw the recognition as such and approve the Singapore corporation as an approved exchange under section 9(1)(a); or

- (c) make no change to the status of the Singapore corporation as an approved exchange or a recognised market operator, as the case may be.

[4/2017]

(6) Where an application is made under subsection (1), the Authority must not exercise its power under subsection (5)(c) without giving the Singapore corporation an opportunity to be heard.

[4/2017]

(7) Where a review of the status of a Singapore corporation is conducted by the Authority on its own initiative under subsection (4), the Authority must not exercise its powers under subsection (5)(a) or (b) without giving the Singapore corporation an opportunity to be heard.

[4/2017]

(8) Any Singapore corporation that is aggrieved by a decision of the Authority made in relation to the Singapore corporation after a review under subsection (4) may, within 30 days after the Singapore corporation is notified of the decision, appeal to the Minister whose decision is final.

[4/2017]

### **Cancellation of approval or recognition**

**13.—**(1) An approved exchange or a recognised market operator that intends to cease operating its organised market or, where it operates more than one organised market, all of its organised markets, may apply to the Authority to cancel its approval as an approved exchange or recognition as a recognised market operator, as the case may be.

[4/2017]

(2) An application under subsection (1) must be made in such form and manner, and not later than such time, as the Authority may specify.

[4/2017]

(3) The Authority may cancel the approval of an approved exchange, or the recognition of a recognised market operator, on the application mentioned in subsection (1) if the Authority is satisfied that —

- (a) the approved exchange or recognised market operator mentioned in subsection (1) has ceased operating its organised market or all of its organised markets, as the case may be; and
- (b) the cancellation of the approval or recognition (as the case may be) will not detract from the objectives specified in section 5.

[4/2017]

### **Power of Authority to revoke approval and recognition**

**14.**—(1) The Authority may revoke any approval of a Singapore corporation as an approved exchange under section 9(1)(a), any recognition of a Singapore corporation as a recognised market operator under section 9(1)(b), or any recognition of a foreign corporation as a recognised market operator under section 9(2), if —

- (a) there exists at any time a ground under section 9(7) or (8) on which the Authority may refuse an application;
- (b) the corporation does not commence operating its organised market or, where it operates more than one organised market, all of its organised markets, within 12 months starting on the date on which it was approved under section 9(1)(a) or was recognised under section 9(1)(b) or (2), as the case may be;
- (c) the corporation ceases to operate its organised market or, where it operates more than one organised market, all of its organised markets;
- (d) the corporation contravenes —
  - (i) any condition or restriction applicable in respect of its approval or recognition, as the case may be;
  - (ii) any direction issued to it by the Authority under this Act; or
  - (iii) any provision of this Act;
- (e) upon the Authority exercising any power under section 46AAB(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary



Authority of Singapore Act 1970 in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval or recognition, as the case may be;

- (f) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public; or
- (g) any information or document provided by the corporation to the Authority is false or misleading.

[4/2017; 31/2017]

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) any approval under section 9(1)(a), or recognition under section 9(1)(b) or (2), that was granted to a corporation without giving the corporation an opportunity to be heard.

[4/2017]

(3) The Authority may revoke an approval under section 9(1)(a), or a recognition under section 9(1)(b) or (2), that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[4/2017]

(4) For the purposes of subsection (1)(c), a corporation is to be treated to have ceased to operate its organised market if —

- (a) it has ceased to operate the organised market for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or

(b) it has ceased to operate the organised market under a direction issued by the Authority under section 45.

[4/2017]

(5) Any corporation that is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision is final.

[4/2017]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as the Minister considers necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(8) Any revocation under subsection (1) or (3) of the approval or recognition of a corporation under section 9(1) or (2) does not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of an organised market operated by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the approval or recognition; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[4/2017]

(9) The Authority must give notice in the *Gazette* of any revocation under subsection (1) or (3) of any approval or recognition of a corporation under section 9(1) or (2).

[4/2017]

*Division 2 — Regulation of Approved Exchanges**Subdivision (1) — Obligations of approved exchanges***General obligations**

**15.—(1)** An approved exchange must —

- (a) as far as is reasonably practicable, ensure that every organised market it operates is a fair, orderly and transparent organised market;
- (b) manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) ensure that access for participation in its facilities is subject to criteria that —
  - (i) are fair and objective; and
  - (ii) are designed to ensure the orderly functioning of the organised market that it operates and to protect the interests of the investing public;
- (e) maintain business rules and, where appropriate, listing rules that make satisfactory provision for —
  - (i) the organised market to be operated in a fair, orderly and transparent manner; and
  - (ii) the proper regulation and supervision of its members;
- (f) enforce compliance with its business rules and, where appropriate, its listing rules;
- (g) have sufficient financial, human and system resources —
  - (i) to operate a fair, orderly and transparent organised market;
  - (ii) to meet contingencies or disasters; and
  - (iii) to provide adequate security arrangements;

- (h) maintain governance arrangements that are adequate for its organised market to be operated in a fair, orderly and transparent manner; and
- (i) ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

(2) In subsection (1)(g), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[4/2017]

### **Obligation to notify Authority of certain matters**

**16.—**(1) An approved exchange must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) any material change to the information provided by the approved exchange in its application under section 8(1) or 12(1);
- (b) any change to the type or number of organised markets it operates;
- (c) the carrying on of any business (called in this section a proscribed business) by the approved exchange other than such business or such class of businesses prescribed by regulations made under section 44;
- (d) the acquisition by the approved exchange of a substantial shareholding in a corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses prescribed by regulations made under section 44;
- (e) the approved exchange becoming aware of any financial irregularity or other matter which in its opinion —
  - (i) may affect its ability to discharge its financial obligations; or

- (ii) may affect the ability of a member of the approved exchange to meet its financial obligations to the approved exchange;
- (f) the approved exchange reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved exchange;
- (g) any other matter that the Authority may —
  - (i) prescribe by regulations made under section 44 for the purposes of this subsection; or
  - (ii) specify by written notice to the approved exchange in any particular case.

[4/2017]

(2) Without limiting section 45(1), the Authority may, at any time after receiving a notice mentioned in subsection (1), issue directions to the approved exchange —

- (a) where the notice relates to a matter mentioned in subsection (1)(c) —
  - (i) requiring it to cease carrying on the proscribed business; or
  - (ii) permitting it to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that the carrying on of the proscribed business subject to those conditions or restrictions is necessary for any purpose mentioned in section 45(1)(a) to (d); or
- (b) where the notice relates to a matter mentioned in subsection (1)(d) —
  - (i) requiring it to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as specified in the directions; or

- (ii) requiring it to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that such exercise or non-exercise of rights subject to those conditions or restrictions is necessary for any purpose mentioned in section 45(1)(a) to (d).

[4/2017]

(3) An approved exchange must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[4/2017]

(4) An approved exchange must notify the Authority of any matter that the Authority may prescribe by regulations made under section 44 for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(5) An approved exchange must notify the Authority of any matter that the Authority may specify by written notice to the approved exchange, no later than such time as the Authority may specify in that notice.

[4/2017]

### **Obligation to manage risks prudently**

**17.—**(1) Without limiting section 15(1)(b), an approved exchange must ensure that the systems and controls concerning the assessment and management of risks to every organised market that the approved exchange operates are adequate and appropriate for the scale and nature of its operations.

[4/2017]

(2) Any approved exchange which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

**Obligation to maintain proper records**

**18.**—(1) An approved exchange must maintain a record of all transactions effected through its organised market in accordance with regulations mentioned in subsection (2).

[4/2017]

(2) The Authority may prescribe by regulations made under section 44 —

- (a) the form and manner in which the record mentioned in subsection (1) is to be maintained;
- (b) the extent to which the record includes details of each transaction; and
- (c) the period of time that the record is to be maintained.

[4/2017]

**Obligation to submit periodic reports**

**19.** An approved exchange must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe by regulations made under section 44.

[4/2017]

**Obligation to assist Authority**

**20.** An approved exchange must provide such assistance to the Authority as the Authority may require for the performance of the Authority's functions and duties, including —

- (a) the furnishing of such returns as the Authority may require for the proper administration of this Act; and
- (b) the provision of —
  - (i) such books and information as the Authority may require for the proper administration of this Act, being books and information —
    - (A) relating to the business of the approved exchange;
    - (B) in respect of any transaction or class of transactions, whether completed or

- uncompleted, effected through the organised market of the approved exchange; or
- (C) in respect of any product or class of products traded on the organised market of the approved exchange; and
- (ii) such other information as the Authority may require for the proper administration of this Act.

[4/2017]

### **Obligation to maintain confidentiality**

**21.**—(1) Subject to subsection (2), an approved exchange and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information that —

- (a) comes to the knowledge of the approved exchange or any of its officers or employees; or
- (b) is in the possession of the approved exchange or any of its officers or employees.

[4/2017]

(2) Subsection (1) does not apply to —

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe by regulations made under section 44;
- (b) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[4/2017]

(3) To avoid doubt, nothing in this section is to be construed as preventing an approved exchange from entering into a written agreement with a user that obliges the approved exchange to maintain a higher degree of confidentiality than that specified in this section.

[4/2017]



**Penalties under this Subdivision**

**22.** Any approved exchange which contravenes section 15(1), 16(1) or (3), 18(1), 19, 20 or 21(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

*Subdivision (2) — Rules of approved exchanges***Business rules and listing rules of approved exchanges**

**23.—(1)** Without limiting sections 15 and 44 —

- (a) the Authority may by regulations made under section 44 prescribe the matters that an approved exchange must provide for in the business rules or listing rules of the approved exchange; and
- (b) the approved exchange must provide for those matters in its business rules or listing rules, as the case may be.

[4/2017]

(2) An approved exchange must not make any amendment to its business rules or listing rules unless it complies with such requirements as the Authority may prescribe by regulations made under section 44.

[4/2017]

(3) In this Subdivision, any reference to an amendment to a business rule or listing rule is to be construed as a reference to a change to the scope of, or to any requirement, obligation or restriction under, the business rule or listing rule (as the case may be), whether the change is made by an alteration to the text of the rule or by any other notice issued by or on behalf of the approved exchange.

[4/2017]

(4) Any approved exchange which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence,

to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Business rules of approved exchanges have effect as contract**

**24.**—(1) The business rules of an approved exchange are to be treated, and are to operate, as a binding contract —

(a) between the approved exchange and each member; and

(b) between each member and every other member.

[4/2017]

(2) The approved exchange and each member are treated to have agreed to observe and perform the provisions of the business rules that are in force for the time being, so far as those provisions are applicable to the approved exchange or that member, as the case may be.

[4/2017]

### **Power of court to order observance or enforcement of business rules or listing rules**

**25.**—(1) Where any person (*A*) which is under an obligation to comply with, observe, enforce or give effect to the business rules or listing rules of an approved exchange fails to do so, the General Division of the High Court may, on the application of the Authority, an approved exchange or a person aggrieved by the failure (*B*), and after giving *A* an opportunity to be heard, make an order directing *A* to comply with, observe, enforce or give effect to those business rules or listing rules.

[4/2017; 40/2019]

(2) This section is in addition to, and not in derogation of, any other remedy available to *B*.

[4/2017]

(3) Any person which, without reasonable excuse, contravenes an order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

(4) Subject to subsection (5), subsection (3) does not affect the powers of the court in relation to the punishment of contempt of the court.

[4/2017]

(5) Where a person is convicted of an offence under subsection (3) in respect of any contravention of an order made under subsection (1), such contravention is not punishable as a contempt of court.

[4/2017]

(6) A person must not be convicted of an offence under subsection (3) in respect of any contravention of an order made under subsection (1) that has been punished as a contempt of court.

[4/2017]

### **Non-compliance with business rules or listing rules not to substantially affect rights of person**

**26.** Any failure by an approved exchange to comply with —

- (a) this Act;
- (b) its business rules; or
- (c) where applicable, its listing rules,

in relation to a matter does not prevent that matter from being treated, for the purposes of this Act, as done in accordance with the business rules or listing rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules or listing rules.

[4/2017]

#### *Subdivision (3) — Matters requiring approval of Authority*

### **Control of substantial shareholding in approved exchange**

**27.—(1)** A person must not enter into any agreement to acquire shares in an approved exchange by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the approved exchange without first obtaining the approval of the Authority to enter into the agreement.

[4/2017]

(2) A person must not become —

- (a) a 12% controller; or
- (b) a 20% controller,

of an approved exchange without first obtaining the approval of the Authority.

[4/2017]

(3) In subsection (2) —

“12% controller” means a person, not being a 20% controller, who alone or together with the person’s associates —

- (a) holds not less than 12% of the shares in the approved exchange; or
- (b) is in a position to control not less than 12% of the votes in the approved exchange;

“20% controller” means a person who, alone or together with the person’s associates —

- (a) holds not less than 20% of the shares in the approved exchange; or
- (b) is in a position to control not less than 20% of the votes in the approved exchange.

[4/2017]

(4) In this section —

(a) a person holds a share if —

- (i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or
- (ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(b) a reference to the control of a percentage of the votes in an approved exchange is to be construed as a reference to the control, whether direct or indirect, of that percentage of the

total number of votes that might be cast in a general meeting of the approved exchange; and

- (c) a person (*A*) is an associate of another person (*B*) if —
- (i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister of *B*;
  - (ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;
  - (iii) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;
  - (iv) *A* is a subsidiary of *B*;
  - (v) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in sub-paragraphs (ii), (iii) and (iv), is in a position to control not less than 20% of the votes in *A*; or
  - (vi) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved exchange.

[4/2017]

(5) The Authority may grant its approval mentioned in subsection (1) or (2) subject to conditions or restrictions.

[4/2017]

(6) Without affecting subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2), or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of an approved exchange in which a substantial shareholder,

12% controller or 20% controller of the approved exchange has an interest.

[4/2017]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares that are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the constitution or other constituent document or documents of the approved exchange —

- (a) no voting rights are exercisable in respect of the shares that are the subject of the direction;
- (b) the approved exchange must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares that are the subject of the direction; and
- (c) except in a liquidation of the approved exchange, the approved exchange must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares that are the subject of the direction.

[4/2017]

(8) Any issue of shares by an approved exchange in contravention of subsection (7)(b) is treated as void, and a person to whom a direction has been issued under subsection (6) must immediately return those shares to the approved exchange, upon which the approved exchange must return to the person any payment received from the person in respect of those shares.

[4/2017]

(9) Any payment made by an approved exchange in contravention of subsection (7)(c) is treated as void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment the person has received to the approved exchange.

[4/2017]

(10) The Authority may, by regulations made under section 44, exempt —

- (a) any person or class of persons; or

(b) any class or description of shares or interests in shares, from the requirement under subsection (1) or (2), subject to such conditions or restrictions as may be prescribed in those regulations. [4/2017]

(11) The Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by written notice. [4/2017]

(12) It is not necessary to publish any exemption granted under subsection (11) in the *Gazette*. [4/2017]

(13) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction. [4/2017]

(14) Any person who contravenes subsection (7)(b) or (c), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction. [4/2017]

### **Approval of chairperson, chief executive officer, director and key persons**

**28.**—(1) An approved exchange must not appoint a person as its chairperson, chief executive officer or director unless the approved exchange has obtained the approval of the Authority. [4/2017]

(2) The Authority may, by written notice, require an approved exchange to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the

approved exchange and the approved exchange must comply with the notice.

[4/2017]

(3) An application for approval under subsection (1) or (2) must be made in such form and manner as the Authority may specify.

[4/2017]

(4) Without limiting section 44 and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe by regulations made under section 44 or notify in writing to the approved exchange.

[4/2017]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under this section without giving the approved exchange an opportunity to be heard.

[4/2017]

(6) The Authority may refuse an application for approval on any of the following grounds without giving the approved exchange an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after 8 October 2018 —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[4/2017]

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[4/2017]

(8) An approved exchange must, as soon as practicable, give written notice to the Authority of the resignation or removal of its



chairperson, chief executive officer or director, or of any person mentioned in any notice issued by the Authority to the approved exchange under subsection (2).

[4/2017]

(9) The Authority may make regulations under section 44 relating to the composition and duties of the board of directors or any committee of an approved exchange.

[4/2017]

(10) In this section, “committee” includes any committee of directors, disciplinary committee or appeals committee of an approved exchange, or any body responsible for disciplinary action against a member of an approved exchange.

[4/2017]

(11) The Authority may, by regulations made under section 44, exempt any approved exchange or class of approved exchanges from complying with subsection (1) or (8), subject to such conditions or restrictions as may be prescribed in those regulations.

[4/2017]

(12) The Authority may, by written notice, exempt any approved exchange from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

[4/2017]

(14) Any approved exchange which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Listing, de-listing or trading of certain instruments, contracts and transactions**

**29.—**(1) An approved exchange must, in respect of any relevant product that is listed or permitted for trading on any organised market operated by the approved exchange, comply with requirements

prescribed by regulations made under section 44 or specified in directions issued under section 45 relating to —

- (a) the limits that the approved exchange must establish on the number of open positions that may be held by any participant in respect of the relevant product;
- (b) the steps that the approved exchange must take to ensure compliance with the limits established under paragraph (a);
- (c) the positions that the approved exchange must reckon for the purpose of determining if limits established under paragraph (a) have been exceeded;
- (d) the settlement procedures that the approved exchange must establish in respect of the relevant product;
- (e) the limits that the approved exchange must establish on the price movements of the relevant product; and
- (f) any other matter in respect of the relevant product that the Authority considers necessary or expedient for the furtherance of the objectives mentioned in section 5.

[4/2017]

(2) An approved exchange must, within such time and in such form and manner as the Authority may specify, notify the Authority that it has taken measures to comply with the requirements mentioned in subsection (1) —

- (a) before listing or de-listing, or permitting the trading of, any relevant product on any organised market operated by the approved exchange; and
- (b) after listing or permitting the trading of any relevant product on any organised market operated by the approved exchange.

[4/2017]

(3) An approved exchange which is required under subsection (2) to notify the Authority must use due care to ensure that the notification is not false or misleading in any material particular.

[4/2017]

(4) Any approved exchange which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(5) Any approved exchange which contravenes subsection (2)(a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Any approved exchange which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[4/2017]

(7) Any participant who wilfully exceeds any limit established by an approved exchange in accordance with the requirements imposed under subsection (1)(a) on the number of open positions that may be held by any participant in respect of any relevant product shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

[4/2017]

(8) In this section, “relevant product” means any instrument, contract or transaction on any organised market operated by the approved exchange, but does not include —

- (a) securities;
- (b) any unit in a collective investment scheme;
- (c) a spot contract;
- (d) a deposit as defined in section 4B of the Banking Act 1970, where the deposit is accepted by a bank or merchant bank licensed under that Act;
- (e) a deposit as defined in section 2 of the Finance Companies Act 1967, where the deposit is accepted by a finance company as defined in that section of that Act;

- (f) any contract of insurance in relation to any class of insurance business specified in section 3(1) of the Insurance Act 1966; or
- (g) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed not to be a derivatives contract.

[4/2017; 1/2020]

### **Listing of approved exchange on organised market**

**30.**—(1) The securities or securities-based derivatives contracts of an approved exchange must not be listed for quotation on an organised market that is operated by the approved exchange or any of its related corporations unless the approved exchange and the operator of the organised market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of the trading of the securities or securities-based derivatives contracts (as the case may be) of the approved exchange on the organised market.

[4/2017]

(2) Where the securities or securities-based derivatives contracts of an approved exchange are listed for quotation on an organised market operated by the approved exchange or any of its related corporations, the Authority may act in place of the operator of the organised market in making decisions and taking action, or require the operator of the organised market to make decisions and to take action on behalf of the Authority, on —

- (a) the admission of the approved exchange to, or the removal of the approved exchange from, the official list of the organised market; and
- (b) the granting of approval for the securities or securities-based derivatives contracts (as the case may be) of the approved exchange to be, or the stopping or suspending of the securities or securities-based derivatives

contracts (as the case may be) of the approved exchange from being, listed for quotation or quoted on the organised market.

[4/2017]

(3) The Authority may, by written notice to the operator of the organised market —

- (a) modify the listing rules of the organised market for the purpose of their application to the listing for quotation or trading of the securities or securities-based derivatives contracts of the approved exchange; or
- (b) waive the application of any listing rule of the organised market to the approved exchange.

[4/2017]

(4) Any approved exchange which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Additional powers of Authority in respect of auditors**

**31.—**(1) If an auditor of an approved exchange, in the course of the performance of the auditor's duties, becomes aware of any matter or irregularity mentioned in the following paragraphs, the auditor must immediately send to the Authority a written report of that matter or irregularity:

- (a) any matter that, in the auditor's opinion, adversely affects or may adversely affect the financial position of the approved exchange to a material extent;
- (b) any matter that, in the auditor's opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;
- (c) any irregularity that has or may have a material effect upon the accounts of the approved exchange, including any

irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.

[4/2017]

(2) An auditor of an approved exchange is not, in the absence of malice on the auditor's part, liable to any action for defamation at the suit of any person in respect of any statement made in the auditor's report under subsection (1).

[4/2017]

(3) Subsection (2) does not restrict or affect any right, privilege or immunity that the auditor of an approved exchange may have, apart from this section, as a defendant in an action for defamation.

[4/2017]

(4) The Authority may impose all or any of the following duties on an auditor of an approved exchange and the auditor must carry out the duties so imposed:

- (a) a duty to submit such additional information and reports in relation to the audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of the audit of the business and affairs of the approved exchange;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of the audit, examination or establishment of procedure mentioned in paragraph (b) or (c).

[4/2017]

(5) The approved exchange must remunerate the auditor in respect of the discharge by the auditor of all or any of the duties mentioned in subsection (4).

[4/2017]

#### *Subdivision (4) — Immunity*

### **Immunity from criminal or civil liability**

**32.—**(1) No criminal or civil liability is incurred by —

- (a) an approved exchange; or

(b) any person acting on behalf of an approved exchange, for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of the approved exchange under this Act or under the business rules or, where appropriate, listing rules of the approved exchange.

[4/2017]

(2) For the purposes of subsection (1), the reference to a person acting on behalf of an approved exchange includes —

- (a) any director of an approved exchange; or
- (b) any member of any committee established by an approved exchange.

[4/2017]

### *Division 3 — Regulation of Recognised Market Operators*

#### **General obligations**

**33.**—(1) A recognised market operator must —

- (a) as far as is reasonably practicable, ensure that every organised market it operates is a fair, orderly and transparent organised market;
- (b) manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) ensure that access for participation in its facilities is subject to criteria that are —
  - (i) fair and objective; and
  - (ii) designed to ensure the orderly functioning of its organised market and to protect the interests of the investing public;

- (e) maintain business rules and, where appropriate, listing rules that make satisfactory provision for —
  - (i) the organised market to be operated in a fair, orderly and transparent manner; and
  - (ii) the proper regulation and supervision of its members;
- (f) enforce compliance with its business rules and, where appropriate, its listing rules;
- (g) have sufficient financial, human and system resources —
  - (i) to operate a fair, orderly and transparent organised market;
  - (ii) to meet contingencies or disasters; and
  - (iii) to provide adequate security arrangements;
- (h) maintain governance arrangements that are adequate for its organised market to be operated in a fair, orderly and transparent manner; and
- (i) ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

(2) In subsection (1)(g), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[4/2017]

### **Obligation to notify Authority of certain matters**

**34.—**(1) A recognised market operator must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) any material change to the information provided by the recognised market operator in its application under section 8(1) or (2) or 12(1);
- (b) the recognised market operator becoming aware of any financial irregularity or other matter which in its opinion —



- (i) may affect its ability to discharge its financial obligations; or
  - (ii) may affect the ability of a participant of the recognised market operator to meet its financial obligations to the recognised market operator;
- (c) any other matter that the Authority may —
- (i) prescribe by regulations made under section 44 for the purposes of this paragraph; or
  - (ii) specify by written notice to the recognised market operator in any particular case.

[4/2017]

(2) A recognised market operator must notify the Authority of any matter that the Authority may prescribe by regulations made under section 44 for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(3) A recognised market operator must notify the Authority of any matter that the Authority may specify by written notice to the recognised market operator, no later than such time as the Authority may specify in that notice.

[4/2017]

### **Obligation to manage risks prudently**

**35.—**(1) Without limiting section 33(1)(b), a recognised market operator must ensure that the systems and controls concerning the assessment and management of risks to every organised market that the recognised market operator operates are adequate and appropriate for the scale and nature of its operations.

[4/2017]

(2) Any recognised market operator which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

**Obligation to maintain proper records**

**36.**—(1) A recognised market operator must maintain a record of all transactions effected through its organised market in accordance with regulations mentioned in subsection (2).

[4/2017]

(2) The Authority may by regulations made under section 44 prescribe —

- (a) the form and manner in which the record mentioned in subsection (1) is to be maintained;
- (b) the extent to which the record includes details of each transaction; and
- (c) the period of time that the record is to be maintained.

[4/2017]

**Obligation to submit periodic reports**

**37.** A recognised market operator must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe by regulations made under section 44.

[4/2017]

**Obligation to assist Authority**

**38.** A recognised market operator must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

- (a) the furnishing of such returns as the Authority may require for the proper administration of this Act; and
- (b) the provision of —
  - (i) such books and information as the Authority may require for the proper administration of this Act, being books and information —
    - (A) relating to the business of the recognised market operator;
    - (B) in respect of any transaction or class of transactions, whether completed or

- uncompleted, effected through the organised market of the recognised market operator; or
- (C) in respect of any product or class of products traded on the organised market of the recognised market operator; and
- (ii) such other information as the Authority may require for the proper administration of this Act.

[4/2017]

### **Obligation to maintain confidentiality**

**39.**—(1) Subject to subsection (2), a recognised market operator and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information that —

- (a) comes to the knowledge of the recognised market operator or any of its officers or employees; or
- (b) is in the possession of the recognised market operator or any of its officers or employees.

[4/2017]

(2) Subsection (1) does not apply to —

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe by regulations made under section 44;
- (b) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[4/2017]

(3) To avoid doubt, nothing in this section is to be construed as preventing a recognised market operator from entering into a written agreement with a user that obliges the recognised market operator to maintain a higher degree of confidentiality than that specified in this section.

[4/2017]

**Non-compliance with business rules or listing rules not to substantially affect rights of person**

**40.** Any failure by a recognised market operator to comply with —

- (a) this Act;
- (b) its business rules; or
- (c) where applicable, its listing rules,

in relation to a matter does not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules or listing rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules or listing rules.

[4/2017]

**Listing, de-listing or trading of certain instruments, contracts and transactions**

**41.—(1)** A recognised market operator must, in respect of any relevant product that is listed or permitted for trading on any organised market operated by the recognised market operator, comply with requirements prescribed by regulations made under section 44 or specified in directions issued under section 45 relating to —

- (a) the limits that the recognised market operator must establish on the number of open positions that may be held by any participant in respect of the relevant product;
- (b) the steps that the recognised market operator must take to ensure compliance with the limits established under paragraph (a);
- (c) the positions that the recognised market operator must reckon for the purpose of determining if limits established under paragraph (a) have been exceeded;
- (d) the settlement procedures that the recognised market operator must establish in respect of the relevant product;

- (e) the limits that the recognised market operator must establish on the price movements of the relevant product; and
- (f) any other matter in respect of the relevant product that the Authority considers necessary or expedient for the furtherance of the objectives mentioned in section 5.

[4/2017]

(2) A recognised market operator must, within such time and in such form and manner as the Authority may specify, notify the Authority that it has taken measures to comply with the requirements mentioned in subsection (1) —

- (a) before listing or de-listing, or permitting the trading of, any relevant product on any organised market operated by the recognised market operator; and
- (b) after listing or permitting the trading of any relevant product on any organised market operated by the recognised market operator.

[4/2017]

(3) A recognised market operator which is required under subsection (2) to notify the Authority must use due care to ensure that the notification is not false or misleading in any material particular.

[4/2017]

(4) Any recognised market operator which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(5) Any recognised market operator which contravenes subsection (2)(a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Any recognised market operator which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[4/2017]

(7) Any participant who wilfully exceeds any limit established by a recognised market operator in accordance with the requirements imposed under subsection (1)(a) on the number of open positions that may be held by any participant in respect of any relevant product shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

[4/2017]

(8) In this section, “relevant product” means any instrument, contract or transaction on any organised market operated by the recognised market operator, but does not include —

- (a) securities;
- (b) any unit in a collective investment scheme;
- (c) a spot contract;
- (d) a deposit as defined in section 4B of the Banking Act 1970, where the deposit is accepted by a bank or merchant bank licensed under that Act;
- (e) a deposit as defined in section 2 of the Finance Companies Act 1967, where the deposit is accepted by a finance company as defined in that section of that Act;
- (f) any contract of insurance in relation to any class of insurance business specified in section 3(1) of the Insurance Act 1966; or
- (g) any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed not to be a derivatives contract.

[4/2017; 1/2020]

### **Penalties under this Division**

**42.** Any recognised market operator which contravenes section 33(1), 34, 36(1), 37, 38 or 39(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

\$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

*Division 4 — General Powers of Authority*

**Power of Authority to remove officers**

**43.**—(1) Subsection (2) applies if the Authority is satisfied that an officer of an approved exchange or a recognised market operator (such approved exchange or recognised market operator being a Singapore corporation) —

- (a) has wilfully contravened, or wilfully caused the approved exchange or recognised market operator to contravene —
  - (i) this Act;
  - (ii) where applicable, the business rules of the approved exchange or recognised market operator; or
  - (iii) where applicable, the listing rules of the approved exchange or recognised market operator;
- (b) has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules, or, where applicable, the listing rules of the approved exchange or recognised market operator, by the approved exchange or recognised market operator, by a participant of the approved exchange or recognised market operator, or by a person associated with that participant;
- (c) has failed to discharge the duties or functions of the officer's office or employment;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him or her in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with the officer's

creditors, being a compromise or scheme of arrangement that is still in operation; or

- (g) has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the officer had acted fraudulently or dishonestly.

[4/2017]

(2) In any case mentioned in subsection (1), the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice direct the approved exchange or recognised market operator to remove the officer from the officer's office or employment, and the approved exchange or recognised market operator must comply with such notice, despite the provisions of section 152 of the Companies Act 1967 or anything in any other law or in the constitution or other constituent document or documents of the approved exchange or recognised market operator.

[4/2017]

(3) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved exchange or a recognised market operator has failed to discharge the duties or functions of the officer's office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe by regulations made under section 44 or notify in writing to the approved exchange or recognised market operator, as the case may be.

[4/2017]

(4) Subject to subsection (5), the Authority must not direct an approved exchange or a recognised market operator to remove an officer from the officer's office or employment without giving the approved exchange or recognised market operator an opportunity to be heard.

[4/2017]

(5) The Authority may direct an approved exchange or a recognised market operator to remove an officer from the officer's office or employment under subsection (2) on any of the following grounds



without giving the approved exchange or recognised market operator an opportunity to be heard:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence, committed before, on or after 8 October 2018 —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that the officer had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[4/2017]

(6) Where the Authority directs an approved exchange or a recognised market operator to remove an officer from the officer's office or employment under subsection (2), the Authority need not give that officer an opportunity to be heard.

[4/2017]

(7) Any approved exchange or recognised market operator that is aggrieved by a direction of the Authority made in relation to the approved exchange or recognised market operator (as the case may be) under subsection (2) may, within 30 days after the approved exchange or recognised market operator (as the case may be) is notified of the direction, appeal to the Minister whose decision is final.

[4/2017]

(8) Despite the lodging of an appeal under subsection (7), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as the Minister considers necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(10) Subject to subsection (11), no criminal or civil liability is incurred by an approved exchange or a recognised market operator in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[4/2017]

(11) Any approved exchange or recognised market operator that, without reasonable excuse, contravenes a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Power of Authority to make regulations**

**44.—**(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations —

- (a) relating to the approval of approved exchanges and the recognition of recognised market operators;
- (b) relating to the requirements applicable to any person who establishes, operates or assists in establishing or operating an organised market, whether or not the person is approved as an approved exchange under section 9(1)(a) or recognised as a recognised market operator under section 9(1)(b) or (2); and
- (c) specifying measures to manage any risks assumed by an approved exchange or a recognised market operator.

[4/2017]

(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision of the regulations made under this section shall be an offence; and
- (b) for a penalty not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing

offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Power of Authority to issue directions**

**45.—**(1) The Authority may issue directions, whether of a general or specific nature, by written notice, to an approved exchange or a recognised market operator, if the Authority thinks it necessary or expedient —

- (a) for ensuring the fair, orderly and transparent operation of any organised market operated by the approved exchange or recognised market operator, or of organised markets operated by approved exchanges or recognised market operators in general;
- (b) for ensuring the integrity and stability of the capital markets or the financial system;
- (c) in the interests of the public or a section of the public or for the protection of investors;
- (d) for the effective administration of this Act; or
- (e) for ensuring compliance with any condition or restriction that the Authority may impose under section 9(4) or (5), 16(2), 27(5), (10) or (11), 28(11) or (12) or 46AAG(1) or (2), or such other obligations or requirements under this Act or as may be prescribed by regulations made under section 44.

[4/2017]

(2) An approved exchange or a recognised market operator must comply with every direction issued to it under subsection (1).

[4/2017]

(3) Any approved exchange or recognised market operator that, without reasonable excuse, contravenes a direction issued to it under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every

day or part of a day during which the offence continues after conviction.

[4/2017]

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[4/2017]

### **Power of Authority in organised market**

**46.—**(1) Without limiting section 45, where the Authority is of the opinion that it is necessary to prohibit trading in —

- (a) particular securities of, or made available by, an entity;
- (b) particular securities-based derivatives contracts of, or made available by, an entity; or
- (c) particular units in a collective investment scheme,

on an organised market of an approved exchange or a recognised market operator —

- (d) in order to protect persons buying or selling the securities, securities-based derivatives contracts or units in a collective investment scheme, as the case may be; or
- (e) in the interests of the public,

the Authority may give written notice to the approved exchange or recognised market operator stating that it is of that opinion and setting out the reasons for its opinion.

[4/2017]

(2) If, after the receipt of the notice given under subsection (1), the approved exchange or recognised market operator fails to take any action in relation to the particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) on that organised market and the Authority continues to be of the opinion that it is necessary to prohibit trading in the particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) on that organised market so as to achieve the objectives under subsection (1)(d) or (e), the Authority may, by written notice to the approved exchange or recognised market operator —

- (a) prohibit trading in the particular securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) on that organised market for such period not exceeding 14 days, as specified in the notice; and
- (b) impose conditions or restrictions on the approved exchange or recognised market operator, as specified in the notice.

[4/2017]

(3) The Authority may, at any time, by written notice, add to, vary or revoke any condition or restriction mentioned in subsection (2)(b).

[4/2017]

(4) An approved exchange or a recognised market operator on which a condition or restriction is imposed under subsection (2)(b) or (3) must satisfy that condition or restriction.

[4/2017]

(5) Where the Authority gives a notice to an approved exchange or a recognised market operator under subsection (2), the Authority must —

- (a) at the same time send a copy of the notice to —
  - (i) in the case of securities, the entity;
  - (ii) in the case of securities-based derivatives contracts, the entity; or
  - (iii) in the case of units in a collective investment scheme, the responsible person of the collective investment scheme,

together with a statement setting out the reasons for the giving of the notice; and

- (b) as soon as practicable, submit to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the approved exchange or recognised market operator.

[4/2017]

(6) Any person who is aggrieved by any action taken by the Authority, an approved exchange or a recognised market operator

under this section may, within 30 days after the person is notified of the action, appeal to the Minister whose decision is final.

[4/2017]

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority, an approved exchange or a recognised market operator under this section continues to have effect pending the Minister's decision.

[4/2017]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as the Minister considers necessary to any action taken by the Authority, an approved exchange or a recognised market operator under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(9) Any approved exchange or recognised market operator which permits trading in securities, securities-based derivatives contracts or units in a collective investment scheme, on the organised market of the approved exchange or recognised market operator in contravention of a notice given under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Emergency powers of Authority**

**46AA.**—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may by written notice direct an approved exchange or a recognised market operator (as the case may be) to take such action as the Authority considers necessary to maintain or restore the fair, orderly and transparent operation of the organised markets operated by the approved exchange or recognised market operator, as the case may be.

[4/2017]

(2) Without affecting subsection (1), the actions which the Authority may direct an approved exchange or a recognised market operator (as the case may be) to take include —

- (a) terminating or suspending trading on the organised market operated by the approved exchange or recognised market operator;
- (b) confining trading to liquidation of positions in capital markets products;
- (c) ordering the liquidation of any position or all positions or the reduction in any position or all 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 positions are to be liquidated;
- (h) requiring any person to act in a specified manner in relation to trading in capital markets products or any class of capital markets products;
- (i) requiring margins or additional margins for any capital markets products; and
- (j) modifying or suspending any of the business rules, or listing rules (as the case may be) of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(3) Where an approved exchange or a recognised market operator fails to comply with any direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may —

- (a) set margin levels in any capital markets products or class of capital markets products to cater for the emergency;
- (b) set limits that may apply to positions acquired in good faith by any person prior to the date of the notice issued by the Authority; or

- (c) take such other action to maintain or restore the fair, orderly and transparent operation of the organised markets operated by the approved exchange or recognised market operator, as the case may be.

[4/2017]

(4) In this section, “emergency” means any threatened or actual market manipulation or cornering, and includes —

- (a) any act of any government affecting any commodity or financial instrument;
- (b) any major market disturbance that prevents an organised market from accurately reflecting the forces of supply and demand for any commodity or financial instrument; or
- (c) any undesirable situation or practice that, in the opinion of the Authority, constitutes an emergency.

[4/2017]

(5) The Authority may modify any action taken by an approved exchange or a recognised market operator under subsection (1), including the setting aside of that action.

[4/2017]

(6) Any person which is aggrieved by any action taken under this section by the Authority, an approved exchange or a recognised market operator, may, within 30 days after the person is notified of the action, appeal to the Minister whose decision is final.

[4/2017]

(7) Despite the lodging of an appeal under subsection (6), any action taken under this section by the Authority, an approved exchange or a recognised market operator, continues to have effect pending the Minister’s decision.

[4/2017]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as the Minister considers necessary to any action taken under this section by the Authority, an approved exchange or a recognised market operator, and such modified action has effect starting on the date of the Minister’s decision.

[4/2017]



(9) Any approved exchange or recognised market operator which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Interpretation of sections 46AAA to 46AAF**

**46AAA.** In this section and sections 46AAB to 46AAF, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to an approved exchange or a recognised market operator, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved exchange or recognised market operator (as the case may be), or acting in an equivalent capacity in relation to the approved exchange or recognised market operator (as the case may be);

“relevant business” means any business of an approved exchange or a recognised market operator —

(a) that the Authority has assumed control of under section 46AAB; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 46AAB;

“statutory adviser” means a statutory adviser appointed under section 46AAB;

“statutory manager” means a statutory manager appointed under section 46AAB.

[4/2017]

**Action by Authority if approved exchange or recognised market operator unable to meet obligations, etc.**

**46AAB.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

- (a) an approved exchange or a recognised market operator informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (b) an approved exchange or a recognised market operator becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that an approved exchange or a recognised market operator —
  - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or to the protection of investors, or to the objectives specified in section 5;
  - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
  - (iii) has contravened any of the provisions of this Act; or
  - (iv) has failed to comply with any condition or restriction imposed on it under section 9(4) or (5); or
- (d) the Authority considers it in the public interest to do so.

[4/2017]

(2) Subject to subsections (1) and (3), the Authority may —

- (a) require the approved exchange or recognised market operator (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

- (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved exchange or recognised market operator (as the case may be) on the proper management of such of the business of the approved exchange or recognised market operator (as the case may be) as the Authority may determine; or
- (c) assume control of and manage such of the business of the approved exchange or recognised market operator (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[4/2017]

(3) In the case of a recognised market operator that is incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the recognised market operator (as the case may be) under subsection (2) is only in relation to —

- (a) the business or affairs of the recognised market operator carried on in, or managed in or from, Singapore; or
- (b) the property of the recognised market operator located in Singapore, or reflected in the books of the recognised market operator in Singapore (as the case may be) in relation to its operations in Singapore.

[4/2017]

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved exchange or a recognised market operator, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) must be discharged or exercised by such persons jointly; and

- (c) must be discharged or exercised by a specified person or such persons.

[4/2017]

(5) Where the Authority has exercised any power under subsection (2), the Authority may, at any time and without affecting its power under section 14(1)(e), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

[4/2017]

(6) No liability is incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

- (a) the exercise or purported exercise of any power under this Act;
- (b) the performance or purported performance of any function or duty under this Act; or
- (c) the compliance or purported compliance with this Act.

[4/2017]

(7) Any approved exchange or recognised market operator that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

**Effect of assumption of control under section 46AAB**

**46AAC.**—(1) Upon assuming control of the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[4/2017]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager —

- (a) must manage the relevant business of the approved exchange or recognised market operator (as the case may be) in the name of and on behalf of the approved exchange or recognised market operator, as the case may be; and
- (b) is to be treated to be an agent of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(3) In managing the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager —

- (a) must consider the interests of the public or the section of the public mentioned in section 46AAB(1)(c)(i), and the need to protect investors; and
- (b) has all the duties, powers and functions of the members of the board of directors of the approved exchange or recognised market operator (as the case may be) (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the approved exchange or recognised market operator (as the case may be), including powers of delegation, in relation to the relevant business of the approved exchange or recognised market operator (as the case may be); but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved exchange or recognised market operator (as the case may be) under the Companies Act 1967 or the constitution of

the approved exchange or recognised market operator (as the case may be).

[4/2017]

(4) Upon the assumption of control of the relevant business of an approved exchange or a recognised market operator by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be), which was in force immediately before the assumption of control, is treated to be revoked unless the Authority gives its approval, by written notice to the person and the approved exchange or recognised market operator (as the case may be), for the person to remain in the appointment.

[4/2017]

(5) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator, a person must not, except with the approval of the Authority, be appointed as the chief executive officer or a director of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(6) Where the Authority has given its approval under subsection (4) or (5) for a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved exchange or a recognised market operator, the Authority may at any time, by written notice to the person, and the approved exchange or recognised market operator (as the case may be), revoke that approval, and the appointment is treated to be revoked on the date specified in the notice.

[4/2017]

(7) If any person, whose appointment as the chief executive officer or a director of an approved exchange or a recognised market operator is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved exchange or recognised market operator (as the case may be) —

(a) the act or purported act of the person is invalid and of no effect; and

(b) the person shall be guilty of an offence.

[4/2017]

(8) If any person who is appointed as the chief executive officer or a director of an approved exchange or a recognised market operator in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved exchange or recognised market operator (as the case may be) —

(a) the act or purported act of the person is invalid and of no effect; and

(b) the person shall be guilty of an offence.

[4/2017]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator —

(a) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision given to a person or body of persons mentioned in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved exchange or recognised market operator (as the case may be),

the direction or decision mentioned in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision mentioned in sub-paragraph (ii); and

(b) a person must not exercise any voting or other right attached to any share in the approved exchange or recognised market operator (as the case may be) in any

manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[4/2017]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) Subsections (4), (5), (7) and (8) have effect despite any written law or rule of law to the contrary.

[4/2017]

### **Duration of control**

**46AAD.**—(1) The Authority must cease control of the relevant business of an approved exchange or a recognised market operator if the Authority is satisfied that —

- (a) the reasons for the Authority's assumption of control have ceased to exist; or
- (b) the Authority's assumption of control is no longer necessary in the interests of the public or the section of the public mentioned in section 46AAB(1)(c)(i), or for the protection of investors.

[4/2017]

(2) A statutory manager is treated to have assumed control of the relevant business of an approved exchange or a recognised market operator on the date of appointment as a statutory manager.

[4/2017]

(3) The appointment of a statutory manager in relation to the relevant business of an approved exchange or a recognised market operator may be revoked by the Authority at any time —

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist;or



- (ii) the appointment is no longer necessary in the interests of the public or the section of the public mentioned in section 46AAB(1)(c)(i), or for the protection of investors; or

(b) on any other ground,

and upon such revocation, the statutory manager must cease control of the relevant business of the approved exchange or recognised market operator, as the case may be.

[4/2017]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

- (a) the Authority's assumption of control of the relevant business of an approved exchange or a recognised market operator;
- (b) the cessation of the Authority's control of the relevant business of an approved exchange or a recognised market operator;
- (c) the appointment of a statutory manager in relation to the relevant business of an approved exchange or a recognised market operator; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of an approved exchange or a recognised market operator.

[4/2017]

### **Responsibilities of officers, member, etc., of approved exchange or recognised market operator**

**46AAE.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator —

- (a) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who ceased to be or still is a chief executive officer, director, member, executive officer, employee,

agent, banker, auditor or office holder of, or trustee for, the approved exchange or recognised market operator (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved exchange or recognised market operator (as the case may be) which is comprised in, forms part of or relates to the relevant business of the approved exchange or recognised market operator (as the case may be), and which is in the person's possession or control; and

- (b) any person who ceased to be or still is a chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved exchange or recognised market operator (as the case may be) must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved exchange or recognised market operator (as the case may be), within such time and in such manner as the Authority or statutory manager may specify.

[4/2017; 40/2019]

(2) Any person who —

- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
- (b) in purported compliance with subsection (1)(b), knowingly or recklessly provides any information or document that 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 \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

**Remuneration and expenses of Authority and others in certain cases**

**46AAF.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved exchange or a recognised market operator —

- (a) to a statutory manager or statutory adviser appointed in relation to the approved exchange or recognised market operator (as the case may be), whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the approved exchange or recognised market operator (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[4/2017]

(2) The approved exchange or recognised market operator (as the case may be) must reimburse the Authority any remuneration and expenses payable by the approved exchange or recognised market operator (as the case may be) to a statutory manager or statutory adviser.

[4/2017]

**Power of Authority to exempt approved exchange or recognised market operator from provisions of this Part**

**46AAG.**—(1) The Authority may, by regulations made under section 44, exempt —

- (a) any approved exchange or recognised market operator; or
- (b) any class of approved exchanges or class of recognised market operators,

from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(2) The Authority may, by written notice, exempt any approved exchange or recognised market operator from any provision of this

Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that such exemption will not detract from the objectives specified in section 5.

[4/2017]

(3) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(4) An approved exchange or a recognised market operator that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(5) An approved exchange or a recognised market operator that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (3).

[4/2017]

(6) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[4/2017]

*Division 5 — Voluntary Transfer of Business of  
Approved Exchange or Recognised Market Operator*

### **Interpretation of this Division**

**46AAH.** In this Division, unless the context otherwise requires —

“business” includes affairs, property, right, obligation and liability;

“Court” means the General Division of the High Court;

“debenture” has the meaning given by section 4(1) of the Companies Act 1967;

“property” includes property, right and power of every description;

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means an approved exchange or a recognised market operator, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved exchange or a recognised market operator, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Division;

“transferor” means an approved exchange or a recognised market operator the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[4/2017; 40/2019]

### **Voluntary transfer of business**

**46AAI.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved exchange or a recognised market operator) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved exchange or a recognised market operator; and
- (c) the Court has approved the transfer.

[4/2017]

(2) Subsection (1) does not affect the right of an approved exchange or a recognised market operator to transfer the whole or any part of its business under any law.

[4/2017]

(3) The Authority may consent to a transfer under subsection (1)(a) if the Authority is satisfied that —

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[4/2017]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part of a transferor's business) under this Division.

[4/2017]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[4/2017]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[4/2017]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[4/2017]

(8) Any person who —

- (a) without reasonable excuse, fails to comply with any requirement under subsection (7); or
- (b) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that 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 \$200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible

in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[4/2017]

### **Approval of transfer**

**46AAJ.**—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[4/2017]

- (2) Before making an application under subsection (1) —
- (a) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;
  - (b) the transferor must obtain the consent of the Authority under section 46AAI(1)(a);
  - (c) the transferor and the transferee must, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;
  - (d) the transferor must, at least 15 days before the application is made but not earlier than one month after the report mentioned in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed by regulations made under section 44;
  - (e) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report mentioned in paragraph (a) for a period of 15 days after the notice referred to in paragraph (d) is published in the *Gazette*; and
  - (f) unless the Court directs otherwise, the transferor and the transferee must serve on their respective participants who are affected by the transfer, at least 15 days before the application is made, a copy of the report mentioned in

paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

[4/2017]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(a) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and

(b) may make any application to the Court in relation to the transfer.

[4/2017]

(4) The Court must not approve the transfer if the Authority has not consented under section 46AAI(1)(a) to the transfer.

[4/2017]

(5) The Court may, after considering the views (if any) of the Authority on the transfer —

(a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(b) refuse to approve the transfer.

[4/2017]

(6) If the transferee is not approved as an approved exchange or recognised as a recognised market operator by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being approved as an approved exchange or recognised as a recognised market operator by the Authority.

[4/2017]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

(a) the transfer to the transferee of the whole or any part of the business of the transferor;

(b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;



- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) the provisions to be made for persons who are affected by the transfer;
- (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[4/2017]

(8) Any order under subsection (7) may —

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to any property which is held by the transferor as trustee; and
- (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[4/2017]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part of the business) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[4/2017]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[4/2017]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[4/2017]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[4/2017]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part of a day during which the offence continues after conviction.

[4/2017]

## PART 2A

### TRADE REPOSITORIES

[34/2012]

#### **Objectives of this Part**

**46A.** The objectives of this Part are —

- (a) to promote safe and efficient trade repositories;
- (b) to promote transparent markets through timely and reliable access to information on transactions; and

(c) to reduce systemic risks.

[34/2012]

### **Interpretation of this Part**

**46B.** In this Part, unless the context otherwise requires —

“foreign trade repository” means a trade repository which is incorporated or formed outside Singapore;

“foreign trade repository licence” means a licence that is granted by the Authority to a foreign trade repository under section 46E(2);

“Singapore trade repository” means a trade repository which is incorporated in Singapore;

“trade repository” means a corporation that collects and maintains information on any transactions relating to any capital markets products, or any other transactions or class of transactions that the Authority may prescribe by regulations made under section 341 for the purposes of this definition;

“trade repository licence” means a licence that is granted by the Authority to a Singapore trade repository under section 46E(1).

[34/2012; 4/2017]

### *Division 1 — Licensing of Trade Repositories*

#### **Holding out as licensed trade repository or licensed foreign trade repository**

**46C.**—(1) A person must not hold out that the person is —

(a) a licensed trade repository, unless the person has in force a trade repository licence granted by the Authority under section 46E(1); or

(b) a licensed foreign trade repository, unless the person has in force a foreign trade repository licence granted by the Authority under section 46E(2).

[34/2012]

(2) Any person who contravenes subsection (1) 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 not exceeding \$2,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Application for licence**

**46D.**—(1) A corporation that is, or intends to be, a Singapore trade repository may apply to the Authority for the grant of a trade repository licence.

[34/2012]

(2) A corporation that is, or intends to be, a foreign trade repository may apply to the Authority for the grant of a foreign trade repository licence.

[34/2012]

(3) An application under subsection (1) or (2) must be —

- (a) made in such form and manner as the Authority may prescribe; and
- (b) accompanied by a non-refundable prescribed application fee, which must be paid in the manner specified by the Authority.

[34/2012]

(4) The Authority may require an applicant to provide the Authority with such information or documents as the Authority considers necessary in relation to the application.

[34/2012]

### **Power of Authority to grant trade repository licence or foreign trade repository licence**

**46E.**—(1) Where a corporation referred to in section 46D(1) has made an application under that provision, the Authority may grant the corporation a trade repository licence.

[34/2012]

(2) Where a corporation referred to in section 46D(2) has made an application under that provision, the Authority may grant the corporation a foreign trade repository licence.

[34/2012]

(3) The Authority may grant a corporation a trade repository licence under subsection (1) or a foreign trade repository licence under subsection (2) subject to such conditions or restrictions as the Authority thinks fit to impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to —

- (a) the activities that the corporation may undertake;
- (b) the transactions that may be reported to the corporation in its capacity as a trade repository; and
- (c) the nature of the investors or participants who may use or have an interest in the corporation as a trade repository.

[34/2012]

(4) The Authority may, at any time, by written notice to the corporation, vary any condition or restriction or impose such further condition or restriction as the Authority may think fit.

[34/2012]

(5) A licensed trade repository or licensed foreign trade repository must, for the duration of the licence, satisfy every condition or restriction that may be imposed on it under subsection (3) or (4).

[34/2012]

(6) The Authority must not grant an applicant a trade repository licence or foreign trade repository licence, unless the applicant meets such requirements, including minimum financial requirements, as the Authority may prescribe, either generally or specifically.

[34/2012]

(7) Without affecting subsections (3), (4) and (6), the Authority may, for the purposes of granting a foreign trade repository licence under subsection (2), have regard, in addition to any requirements prescribed under subsection (6), to —

- (a) whether adequate arrangements exist for co-operation between the Authority and the primary financial services regulatory authority responsible for the supervision of the foreign trade repository in the country or territory in which

the head office or principal place of business of the foreign trade repository is situated; and

- (b) whether the foreign trade repository is, in the country or territory in which the head office or principal place of business is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 46A are achieved, to the requirements and supervision to which licensed trade repositories are subject under this Act.

[34/2012]

(8) In considering whether a foreign trade repository has satisfied the requirements specified in subsection (7)(b), the Authority may have regard to —

- (a) the relevant laws and practices of the country or territory in which the head office or principal place of business of the foreign trade repository is situated; and
- (b) the rules and practices of the foreign trade repository acting in its capacity as a trade repository.

[34/2012]

(9) The Authority may refuse to grant a corporation a trade repository licence or foreign trade repository licence, if —

- (a) the corporation has not provided the Authority with such information as the Authority may require, relating to —
  - (i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business or operations; or
  - (ii) any circumstances likely to affect the corporation's manner of conducting business or operations;
- (b) any information or document provided by the corporation to the Authority is false or misleading;
- (c) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

- (d) execution against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) a receiver, a receiver and manager, a judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;
- (f) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder (as the case may be), being a compromise or scheme of arrangement that is still in operation;
- (g) the corporation, a substantial shareholder of the corporation or any officer of the corporation —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or
  - (ii) has been convicted of an offence under this Act committed before, on or after 1 August 2013;
- (h) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any licensed trade repository or licensed foreign trade repository;
- (i) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;

- (j) the Authority has reason to believe that the corporation may not be able to act in the best interests of its participants, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;
  - (k) the Authority is not satisfied as to —
    - (i) the financial standing of the corporation or any of its substantial shareholders; or
    - (ii) the manner in which the business of the corporation is to be conducted, or the operations of the corporation are to be conducted;
  - (l) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with the establishment or operation of any licensed trade repository or licensed foreign trade repository;
  - (m) there are other circumstances which are likely to —
    - (i) lead to the improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or
    - (ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;
  - (n) the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a safe and efficient trade repository; or
  - (o) the Authority is of the opinion that it would be contrary to the interests of the public to grant the corporation a trade repository licence or foreign trade repository licence.  
*[34/2012]*
- (10) Subject to subsection (11), the Authority must not refuse to grant a corporation a trade repository licence or foreign trade



repository licence under subsection (9) without giving the corporation an opportunity to be heard.

[34/2012]

(11) The Authority may refuse to grant a corporation a trade repository licence or foreign trade repository licence on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(12) The Authority must give notice in the *Gazette* of any corporation granted a trade repository licence under subsection (1) or a foreign trade repository licence under subsection (2), and such notice may include all or any of the conditions or restrictions imposed by the Authority on the corporation under subsections (3) and (4).

[34/2012]

(13) Any applicant which is aggrieved by a refusal of the Authority under subsection (6), (9) or (11) to grant to the applicant a trade repository licence or foreign trade repository licence may, within 30 days after the applicant is notified of the refusal, appeal to the Minister, whose decision is final.

[34/2012]

(14) Any licensed trade repository or licensed foreign trade repository which contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not

exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Annual fees payable by licensed trade repository or licensed foreign trade repository**

**46F.**—(1) Every licensed trade repository and every licensed foreign trade repository must pay to the Authority such annual fees as may be prescribed in such manner as the Authority may specify.

[34/2012]

(2) The Authority may, where it considers appropriate, refund or remit the whole or any part of any annual fee paid or payable to it.

[34/2012]

### **Cancellation of trade repository licence or foreign trade repository licence**

**46G.**—(1) A corporation which intends to cease operating as a licensed trade repository or licensed foreign trade repository may apply to the Authority to cancel its trade repository licence or foreign trade repository licence, as the case may be.

[34/2012]

(2) An application under subsection (1) must be made in such form and manner, and not later than such time, as the Authority may prescribe.

[34/2012]

(3) The Authority may cancel the trade repository licence or foreign trade repository licence on such application if the Authority is satisfied that the cancellation of the trade repository licence or foreign trade repository licence (as the case may be) will not detract from the objectives specified in section 46A.

[34/2012]

### **Power of Authority to revoke trade repository licence or foreign trade repository licence**

**46H.**—(1) The Authority may revoke a trade repository licence or foreign trade repository licence granted to a corporation, if —

- (a) there exists at any time a ground under section 46E(6) or (9) on which the Authority may refuse an application;

- (b) the corporation does not commence operating as a licensed trade repository or licensed foreign trade repository (as the case may be) within 12 months after the date on which it was granted the trade repository licence or foreign trade repository licence, as the case may be;
- (c) the corporation ceases to operate as a trade repository;
- (d) the corporation contravenes —
  - (i) any condition or restriction applicable in respect of its trade repository licence or foreign trade repository licence, as the case may be;
  - (ii) any direction issued to it by the Authority under this Act; or
  - (iii) any provision in this Act;
- (da) upon the Authority exercising any power under section 46ZIB(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to the corporation, the Authority considers that it is in the public interest to revoke the trade repository licence or foreign trade repository licence, as the case may be;
- (e) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public; or
- (f) any information or document provided by the corporation to the Authority is false or misleading.

*[34/2012; 10/2013; 31/2017]*

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) a trade repository licence or foreign trade repository licence that was granted to a corporation without giving the corporation an opportunity to be heard.

*[34/2012]*

(3) The Authority may revoke a trade repository licence or foreign trade repository licence that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(4) For the purposes of subsection (1)(c), a corporation is deemed to have ceased to operate as a trade repository if —

- (a) it has ceased to operate as a trade repository for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or
- (b) it has ceased to operate as a trade repository under a direction issued by the Authority under section 46ZK.

[34/2012]

(5) Any corporation which is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister, whose decision is final.

[34/2012]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[34/2012]

(7) The Minister may, when deciding an appeal under subsection (5), make such modifications as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect from the date of the Minister's decision.

[34/2012]

(8) Any revocation under subsection (1) or (3) of a trade repository licence or foreign trade repository licence granted to a corporation does not operate as to affect any report to the corporation made under Part 6A, or any obligation under Part 6A that was satisfied by making a report to the corporation, while the corporation was a licensed trade repository or licensed foreign trade repository, as the case may be.

[34/2012]

(9) The Authority must give notice in the *Gazette* of any revocation under subsection (1) or (3) of a trade repository licence or foreign trade repository licence.

[34/2012]

*Division 2 — Regulation of Licensed  
Trade Repositories*

*Subdivision (1) — Obligations of licensed  
trade repositories*

**General obligations**

**46I.—(1)** A licensed trade repository —

- (a) must operate in a safe and efficient manner in its capacity as a trade repository;
- (b) must manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) must ensure that access for participation in the licensed trade repository is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of the licensed trade repository and to protect the interests of the investing public;
- (e) must maintain business rules that make satisfactory provision for the licensed trade repository to be operated in a safe and efficient manner;

- (f) must enforce compliance by its participants with its business rules;
- (g) must have sufficient financial, human and system resources —
  - (i) to operate in a safe and efficient manner in its capacity as a trade repository;
  - (ii) to meet contingencies or disasters; and
  - (iii) to provide adequate security arrangements;
- (h) must ensure that the Authority is provided with access to all information on transactions reported to the licensed trade repository;
- (i) must maintain governance arrangements that are adequate for the licensed trade repository to be operated in a safe and efficient manner; and
- (j) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

(2) In subsection (1)(g), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[34/2012]

### **Obligation to manage risks prudently**

**46J.** Without limiting section 46I(1)(b), a licensed trade repository must —

- (a) ensure that the systems and controls concerning the assessment and management of risks to the licensed trade repository are adequate and appropriate for the scale and nature of its operations; and
- (b) have adequate arrangements, processes, mechanisms or services to collect and maintain information on transactions reported to the licensed trade repository.

[34/2012]

**Obligation to notify Authority of certain matters**

**46K.**—(1) A licensed trade repository must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

- (a) any material change to the information provided by the licensed trade repository in its application under section 46D(1);
- (b) the carrying on by the licensed trade repository of any business (called in this section a proscribed business) other than such business or such class of businesses prescribed by regulations made under section 46ZJ;
- (c) the acquisition by the licensed trade repository of a substantial shareholding in any corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses prescribed by regulations made under section 46ZJ;
- (d) the licensed trade repository becoming aware of any financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations;
- (e) the licensed trade repository reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a participant of the licensed trade repository;
- (f) any other matter that the Authority may —
  - (i) prescribe by regulations made under section 46ZJ for the purposes of this paragraph; or
  - (ii) specify by written notice to the licensed trade repository in any particular case.

[34/2012; 4/2017]

(2) Without limiting section 46ZK(1), the Authority may, at any time after receiving a notice referred to in subsection (1), issue directions to the licensed trade repository —

- (a) where the notice relates to a matter referred to in subsection (1)(b) —

- (i) to cease carrying on the proscribed business; or
  - (ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 46ZK(1); or
- (b) where the notice relates to a matter referred to in subsection (1)(c) —
- (i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as the Authority considers appropriate; or
  - (ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 46ZK(1).

[34/2012]

(3) A licensed trade repository must comply with every direction issued to it under subsection (2), despite anything to the contrary in the Companies Act 1967 or any other law.

[34/2012]

### **Obligation to maintain proper records**

**46L.**—(1) A licensed trade repository must maintain a record of all transactions reported to the licensed trade repository.

[34/2012]

(2) The Authority may prescribe by regulations made under section 46ZJ —

- (a) the form and manner in which the record referred to in subsection (1) must be maintained;
- (b) the information and details relating to each transaction that are to be maintained in the record; and
- (c) the period of time that the record is to be maintained.

[34/2012]



**Obligation to submit periodic reports**

**46M.** A licensed trade repository must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

**Obligation to assist Authority**

**46N.** A licensed trade repository must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

- (a) the furnishing of such returns as the Authority may require for the proper administration of this Act; and
- (b) the provision of —
  - (i) such books and information as the Authority may require for the proper administration of this Act, being books and information —
    - (A) relating to the business or operations of the licensed trade repository; or
    - (B) in respect of any transaction or class of transactions reported to the licensed trade repository; and
  - (ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

**Obligation to maintain confidentiality**

**46O.**—(1) Subject to subsection (2), a licensed trade repository and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information and transaction information that —

- (a) comes to the knowledge of the licensed trade repository or any of its officers or employees; or
- (b) is in the possession of the licensed trade repository or any of its officers or employees.

[34/2012]

(2) Subsection (1) does not apply to —

- (a) the disclosure of user information or transaction information for such purposes, or in such circumstances, as the Authority may prescribe;
- (b) any disclosure of user information or transaction information which is authorised by the Authority to be disclosed or provided; or
- (c) the disclosure of user information or transaction information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing a licensed trade repository from entering into a written agreement with a participant which obliges the licensed trade repository to maintain a higher degree of confidentiality than that specified in this section.

[34/2012]

(4) A licensed trade repository must comply with such other requirements relating to confidentiality as the Authority may prescribe.

[34/2012]

### **Penalties under this Subdivision**

**46P.** Any licensed trade repository which contravenes section 46I(1), 46J, 46K(1) or (3), 46L(1), 46M, 46N or 46O(1) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

*Subdivision (2) — Rules of licensed trade repositories***Business rules of licensed trade repositories**

**46Q.**—(1) Without limiting sections 46I and 46ZJ —

- (a) the Authority may prescribe the matters that a licensed trade repository must provide for in the business rules of the licensed trade repository; and
- (b) the licensed trade repository must provide for those matters in its business rules.

[34/2012]

(2) A licensed trade repository must not make any amendments to its business rules unless it complies with such requirements as the Authority may prescribe.

[34/2012]

(3) In this Subdivision, any reference to an amendment to a business rule is to be construed as a reference to a change to the scope of, or to any requirement, obligation or restriction under, the business rule, whether the change is made by an alteration to the text of the business rule or by any other notice issued by or on behalf of the licensed trade repository.

[34/2012]

(4) Any licensed trade repository which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

**Business rules of licensed trade repositories have effect as contract**

**46R.**—(1) The business rules of a licensed trade repository are deemed to be, and operate as, a binding contract between the licensed trade repository and each participant.

[34/2012]

(2) The licensed trade repository and each participant are deemed to have agreed to observe, and perform the obligations under, the provisions of the business rules that are in force for the time being, so

far as those provisions are applicable to the licensed trade repository or participant, as the case may be.

[34/2012]

### **Power of court to order observance or enforcement of business rules**

**46S.**—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a licensed trade repository fails to do so, the General Division of the High Court may, on the application of the Authority, the licensed trade repository or a person aggrieved by the failure, and after giving the firstmentioned person an opportunity to be heard, make an order directing the firstmentioned person to comply with, observe, enforce or give effect to those business rules.

[34/2012; 40/2019]

(2) In this section, “person” includes a licensed trade repository.

[34/2012]

(3) This section is in addition to, and not in derogation of, any other remedy available to an aggrieved person referred to in subsection (1).

[34/2012]

### **Non-compliance with business rules not to substantially affect rights of person**

**46T.** Any failure by a licensed trade repository to comply with this Act or its business rules in relation to a matter does not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules, so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules.

[34/2012]

#### *Subdivision (3) — Matters requiring approval of Authority*

### **Control of substantial shareholding in licensed trade repository**

**46U.**—(1) A person must not enter into any agreement to acquire shares in a licensed trade repository, being an agreement by virtue of which the person would, if the agreement had been carried out,

become a substantial shareholder of the licensed trade repository, without first obtaining the approval of the Authority to enter into the agreement.

[34/2012]

(2) A person must not become either of the following without first obtaining the approval of the Authority:

- (a) a 12% controller of a licensed trade repository;
- (b) a 20% controller of a licensed trade repository.

[34/2012]

(3) In subsection (2) —

“12% controller”, in relation to a licensed trade repository, means a person, not being a 20% controller, who alone or together with the person’s associates —

- (a) holds not less than 12% of the shares in the licensed trade repository; or
- (b) is in a position to control not less than 12% of the votes in the licensed trade repository;

“20% controller”, in relation to a licensed trade repository, means a person who, alone or together with the person’s associates —

- (a) holds not less than 20% of the shares in the licensed trade repository; or
- (b) is in a position to control not less than 20% of the votes in the licensed trade repository.

[34/2012]

(4) In this section —

- (a) a person holds a share if —
  - (i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or
  - (ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be

disregarded under section 7(6) to (10) of the Companies Act 1967;

- (b) a reference to the control of a percentage of the votes in a licensed trade repository is to be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the licensed trade repository; and
- (c) a person, *A*, is an associate of another person, *B*, if —
  - (i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister of *B*;
  - (ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;
  - (iii) [*Deleted by Act 35 of 2014*]
  - (iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;
  - (v) *A* is a subsidiary of *B*;
  - (vi) [*Deleted by Act 35 of 2014*]
  - (vii) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in sub-paragraphs (ii), (iv) and (v), is in a position to control not less than 20% of the votes in *A*; or
  - (viii) [*Deleted by Act 35 of 2014*]
  - (ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other

interests in, or with respect to the exercise of their votes in relation to, the licensed trade repository.

*[34/2012; 35/2014]*

(5) The Authority may grant its approval referred to in subsection (1) or (2) subject to such conditions or restrictions as the Authority may think fit.

*[34/2012]*

(6) Without affecting subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of a licensed trade repository in which a substantial shareholder, 12% controller or 20% controller of the licensed trade repository has an interest.

*[34/2012]*

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the memorandum or articles of association or other constituent document or documents of the licensed trade repository —

- (a) no voting rights are exercisable in respect of the shares which are the subject of the direction;
- (b) the licensed trade repository must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the licensed trade repository, the licensed trade repository must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

*[34/2012]*

(8) Any issue of shares by a licensed trade repository in contravention of subsection (7)(b) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return those shares to the licensed trade repository, upon

which the licensed trade repository must return to the person any payment received from the person in respect of those shares.

[34/2012]

(9) Any payment made by a licensed trade repository in contravention of subsection (7)(c) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment the person has received to the licensed trade repository.

[34/2012]

(10) Without affecting sections 46ZL(1) and 337(1), the Authority may, by regulations made under section 46ZJ, exempt all or any of the following from subsection (1) or (2), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

(a) any person or class of persons;

(b) any class or description of shares or interests in shares.

[34/2012]

(11) Without affecting sections 46ZL(2) and 337(3) and (4), the Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(12) It is not necessary to publish any exemption granted under subsection (11) in the *Gazette*.

[34/2012]

(13) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(14) Any person who contravenes subsection (7)(b) or (c), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a



further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Approval of chairperson, chief executive officer, director and key persons**

**46V.**—(1) A licensed trade repository must not appoint a person as its chairperson, chief executive officer or director unless the licensed trade repository has obtained the approval of the Authority.

[34/2012]

(2) The Authority may, by written notice, require a licensed trade repository to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the licensed trade repository, and the licensed trade repository must comply with the notice.

[34/2012]

(3) An application for approval under subsection (1) or (2) must be made in such form and manner as the Authority may prescribe.

[34/2012]

(4) Without limiting section 46ZJ and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

[34/2012]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under this section without giving the licensed trade repository an opportunity to be heard.

[34/2012]

(6) The Authority may refuse an application for approval on any of the following grounds without giving the licensed trade repository an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013 —

- (i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and
- (ii) punishable with imprisonment for a term of 3 months or more.

[34/2012]

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[34/2012]

(8) A licensed trade repository must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairperson, chief executive officer or director or of any person referred to in the notice issued by the Authority under subsection (2).

[34/2012]

(9) The Authority may make regulations under section 46ZJ relating to the composition and duties of the board of directors or any committee of a licensed trade repository.

[34/2012]

(10) In this section, “committee” includes any committee of directors, disciplinary committee or appeals committee of a licensed trade repository, and any body responsible for disciplinary action against a participant of a licensed trade repository.

[34/2012]

(11) Without affecting sections 46ZL(1) and 337(1), the Authority may, by regulations made under section 46ZJ, exempt any licensed trade repository or class of licensed trade repositories from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(12) Without affecting sections 46ZL(2) and 337(3) and (4), the Authority may, by written notice, exempt any licensed trade repository from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

[34/2012]

(14) Subject to subsections (11) and (12), any licensed trade repository which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

#### *Subdivision (4) — Powers of Authority*

**46W.** [Repealed by Act 10 of 2013]

#### **Additional powers of Authority in respect of auditors**

**46X.**—(1) If an auditor of a licensed trade repository, in the course of the performance of his or her duties, becomes aware of any matter or irregularity referred to in the following paragraphs, he or she must immediately send to the Authority a written report of that matter or irregularity:

- (a) any matter which, in his or her opinion, adversely affects or may adversely affect the financial position of the licensed trade repository to a material extent;
- (b) any matter which, in his or her opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;
- (c) any irregularity that has or may have a material effect upon the accounts of the licensed trade repository, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.

[34/2012]

(2) An auditor of a licensed trade repository shall not, in the absence of malice on his or her part, be liable to any action for defamation at the suit of any person in respect of any statement made in his or her report under subsection (1).

[34/2012]

(3) Subsection (2) does not restrict or affect any right, privilege or immunity that the auditor of a licensed trade repository may have, apart from this section, as a defendant in an action for defamation.

[34/2012]

(4) The Authority may impose all or any of the following duties on an auditor of a licensed trade repository, and the auditor must carry out the duties so imposed:

- (a) a duty to submit such additional information and reports in relation to his or her audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his or her audit of the business and affairs of the licensed trade repository;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his or her audit, examination or establishment of procedure referred to in paragraph (b) or (c).

[34/2012]

(5) The licensed trade repository must remunerate the auditor in respect of the discharge by him or her of all or any of the duties referred to in subsection (4).

[34/2012]

### **Emergency powers of Authority**

**46Y.**—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may direct by written notice a licensed trade repository to take such action as the Authority considers necessary to maintain or restore the safe and efficient operation of the licensed trade repository.

[34/2012]

(2) Where a licensed trade repository fails to comply with any direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may take such action as the

Authority thinks fit to maintain or restore the safe and efficient operation of the licensed trade repository.

[34/2012]

(3) In this section, “emergency” includes —

- (a) any threatened or actual market manipulation;
- (b) any act of any government affecting any commodity or financial instrument;
- (c) any major market disturbance which prevents a market from accurately reflecting the forces of supply and demand for such commodity or financial instrument; or
- (d) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

[34/2012; 4/2017]

(4) The Authority may modify any action taken by a licensed trade repository under subsection (1), including the setting aside of that action.

[34/2012]

(5) Any person who is aggrieved by any action taken by the Authority, or by a licensed trade repository, under this section may, within 30 days after the person is notified of the action, appeal to the Minister, whose decision is final.

[34/2012]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority, or by a licensed trade repository, under this section continues to have effect pending the Minister’s decision.

[34/2012]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he or she considers necessary to any action taken by the Authority, or by a licensed trade repository, under this section, and any such modified action has effect from the date of the Minister’s decision.

[34/2012]

(8) Any licensed trade repository which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding

\$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Power of Authority to remove officers of licensed trade repository**

**46Z.**—(1) Where the Authority is satisfied that any of the following applies to an officer of a licensed trade repository, the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice direct the licensed trade repository to remove the officer from his or her office or employment, and the licensed trade repository must comply with such notice, despite the provisions of section 152 of the Companies Act 1967 or anything in any other law or in the memorandum or articles of association or other constituent document or documents of the licensed trade repository:

- (a) the officer has wilfully contravened, or wilfully caused the licensed trade repository to contravene, this Act or the business rules of the licensed trade repository;
- (b) the officer has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules of the licensed trade repository, by the licensed trade repository, by a participant of the licensed trade repository or by a person associated with that participant;
- (c) the officer has failed to discharge the duties or functions of his or her office or employment;
- (d) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) the officer has had execution against him or her in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) the officer has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;

- (g) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly.

[34/2012]

(2) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of a licensed trade repository has failed to discharge the duties or functions of his or her office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

[34/2012]

(3) Subject to subsection (4), the Authority must not direct a licensed trade repository to remove an officer from his or her office or employment without giving the licensed trade repository an opportunity to be heard.

[34/2012]

(4) The Authority may direct a licensed trade repository to remove an officer from his or her office or employment under subsection (1) on any of the following grounds without giving the licensed trade repository an opportunity to be heard:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013 —
- (i) involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[34/2012]

(5) Where the Authority directs a licensed trade repository to remove an officer from his or her office or employment under

subsection (1), the Authority need not give that officer an opportunity to be heard.

[34/2012]

(6) Any licensed trade repository that is aggrieved by a direction of the Authority made in relation to the licensed trade repository under subsection (1) may, within 30 days after the licensed trade repository is notified of the direction, appeal to the Minister, whose decision is final.

[34/2012]

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[34/2012]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect from the date of the Minister's decision.

[34/2012]

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by a licensed trade repository in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[34/2012]

(10) Any licensed trade repository which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### *Subdivision (5) — Immunity*

#### **Immunity from criminal or civil liability**

**46ZA.**—(1) No criminal or civil liability shall be incurred by a licensed trade repository, or by any person specified in subsection (2), for any thing done (including any statement made) or omitted to be



done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of the licensed trade repository under this Act or under the business rules of the licensed trade repository.

[34/2012]

(2) For the purposes of subsection (1), the specified person is any person acting on behalf of the licensed trade repository, including —

- (a) any director of the licensed trade repository; or
- (b) any member of any committee established by the licensed trade repository.

[34/2012]

### *Division 3 — Regulation of Licensed Foreign Trade Repositories*

#### **General obligations**

**46ZB.**—(1) A licensed foreign trade repository —

- (a) must operate in a safe and efficient manner in its capacity as a trade repository;
- (b) must manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) must ensure that access for participation in the licensed foreign trade repository is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of the licensed foreign trade repository and to protect the interests of the investing public;
- (e) must maintain business rules that make satisfactory provision for the licensed foreign trade repository to be operated in a safe and efficient manner;
- (f) must enforce compliance by its participants with its business rules;

- (g) must have sufficient financial, human and system resources —
  - (i) to operate in a safe and efficient manner in its capacity as a trade repository;
  - (ii) to meet contingencies or disasters; and
  - (iii) to provide adequate security arrangements;
- (h) must ensure that the Authority is provided with access to all information on transactions reported to the licensed foreign trade repository;
- (i) must maintain governance arrangements that are adequate for the licensed foreign trade repository to be operated in a safe and efficient manner; and
- (j) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

(2) In subsection (1)(g), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[34/2012]

### **Obligation to manage risks prudently**

**46ZC.** Without limiting section 46ZB(1)(b), a licensed foreign trade repository must —

- (a) ensure that the systems and controls concerning the assessment and management of risks to the licensed foreign trade repository are adequate and appropriate for the scale and nature of its operations; and
- (b) have adequate arrangements, processes, mechanisms or services to collect and maintain information on transactions reported to the licensed foreign trade repository.

[34/2012]

**Obligation to notify Authority of certain matters**

**46ZD.** A licensed foreign trade repository must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

- (a) any material change to the information provided by the licensed foreign trade repository in its application under section 46D(2);
- (b) the licensed foreign trade repository becoming aware of any financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations;
- (c) any other matter that the Authority may —
  - (i) prescribe by regulations made under section 46ZJ for the purposes of this paragraph; or
  - (ii) specify by written notice to the licensed foreign trade repository in any particular case.

[34/2012]

**Obligation to maintain proper records**

**46ZE.**—(1) A licensed foreign trade repository must maintain a record of all transactions reported to the licensed foreign trade repository.

[34/2012]

(2) The Authority may prescribe by regulations made under section 46ZJ —

- (a) the form and manner in which the record referred to in subsection (1) must be maintained;
- (b) the information and details relating to each transaction that are to be maintained in the record; and
- (c) the period of time that the record is to be maintained.

[34/2012]

**Obligation to submit periodic reports**

**46ZF.** A licensed foreign trade repository must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

**Obligation to assist Authority**

**46ZG.** A licensed foreign trade repository must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

- (a) the furnishing of such returns as the Authority may require for the proper administration of this Act; and
- (b) the provision of —
  - (i) such books and information as the Authority may require for the proper administration of this Act, being books and information —
    - (A) relating to the business or operations of the licensed foreign trade repository; or
    - (B) in respect of any transaction or class of transactions reported to the licensed foreign trade repository; and
  - (ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

**Obligation to maintain confidentiality**

**46ZH.**—(1) Subject to subsection (2), a licensed foreign trade repository and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information or transaction information that —

- (a) comes to the knowledge of the licensed foreign trade repository or any of its officers or employees; or
- (b) is in the possession of the licensed foreign trade repository or any of its officers or employees.

[34/2012]

(2) Subsection (1) does not apply to —

- (a) the disclosure of user information or transaction information for such purposes, or in such circumstances, as the Authority may prescribe;
- (b) any disclosure of user information or transaction information which is authorised by the Authority to be disclosed or provided; or
- (c) the disclosure of user information or transaction information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing a licensed foreign trade repository from entering into a written agreement with a participant which obliges the licensed foreign trade repository to maintain a higher degree of confidentiality than that specified in this section.

[34/2012]

(4) A licensed foreign trade repository must comply with such other requirements relating to confidentiality as the Authority may prescribe.

[34/2012]

### **Penalties under this Division**

**46ZI.** Any licensed foreign trade repository which contravenes section 46ZB(1), 46ZC, 46ZD, 46ZE(1), 46ZF, 46ZG or 46ZH(1) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### *Division 4 — General Powers of Authority*

#### **Interpretation of sections 46ZIA to 46ZIF**

**46ZIA.** In this section and sections 46ZIB to 46ZIF, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to a licensed trade repository or licensed foreign trade repository, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the licensed trade repository or licensed foreign trade repository (as the case may be), or acting in an equivalent capacity in relation to the licensed trade repository or licensed foreign trade repository, as the case may be;

“relevant business” means any business of a licensed trade repository or licensed foreign trade repository —

- (a) which the Authority has assumed control of under section 46ZIB; or
- (b) in relation to which a statutory adviser or a statutory manager has been appointed under section 46ZIB;

“statutory adviser” means a statutory adviser appointed under section 46ZIB;

“statutory manager” means a statutory manager appointed under section 46ZIB.

[10/2013]

### **Action by Authority if licensed trade repository unable to meet obligations, etc.**

**46ZIB.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

- (a) a licensed trade repository or licensed foreign trade repository informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (b) a licensed trade repository or licensed foreign trade repository becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that a licensed trade repository or licensed foreign trade repository —

- (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 46A;
    - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
    - (iii) has contravened any of the provisions of this Act; or
    - (iv) has failed to comply with any condition or restriction imposed on it under section 46E(3) or (4); or
  - (d) the Authority considers it in the public interest to do so.  
*[10/2013]*
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the licensed trade repository or licensed foreign trade repository (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
  - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the licensed trade repository or licensed foreign trade repository (as the case may be) on the proper management of such of the business of the licensed trade repository or licensed foreign trade repository (as the case may be) as the Authority may determine; or
  - (c) assume control of and manage such of the business of the licensed trade repository or licensed foreign trade repository (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.  
*[10/2013]*
- (3) In the case of a licensed foreign trade repository, any appointment of a statutory adviser or statutory manager or any

assumption of control by the Authority of any business of the licensed foreign trade repository under subsection (2) is only in relation to —

- (a) the business or affairs of the licensed foreign trade repository carried on in, or managed in or from, Singapore; or
- (b) the property of the licensed foreign trade repository located in Singapore or reflected in the books of the licensed foreign trade repository in Singapore (as the case may be) in relation to its operations in Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of a licensed trade repository or licensed foreign trade repository, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) must be discharged or exercised by such persons jointly; and
- (c) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 46H(1)(da), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or



omitted to be done with reasonable care and in good faith in the course of or in connection with —

- (a) the exercise or purported exercise of any power under this Act;
- (b) the performance or purported performance of any function or duty under this Act; or
- (c) the compliance or purported compliance with this Act.

[10/2013]

(7) Any licensed trade repository or licensed foreign trade repository that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Effect of assumption of control under section 46ZIB**

**46ZIC.**—(1) Upon assuming control of the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager —

- (a) must manage the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) in the name of and on behalf of the licensed trade repository or licensed foreign trade repository, as the case may be; and
- (b) is deemed to be an agent of the licensed trade repository or licensed foreign trade repository, as the case may be.

[10/2013]

(3) In managing the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager —

- (a) must consider the interests of the public or the section of the public referred to in section 46ZIB(1)(c)(i), and the need to protect investors; and
- (b) has all the duties, powers and functions of the members of the board of directors of the licensed trade repository or licensed foreign trade repository (as the case may be) (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the licensed trade repository or licensed foreign trade repository (as the case may be), including powers of delegation, in relation to the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be); but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the licensed trade repository or licensed foreign trade repository (as the case may be) under the Companies Act 1967 or the constitution of the licensed trade repository or licensed foreign trade repository (as the case may be).

*[10/2013]*

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of a licensed trade repository or licensed foreign trade repository by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be), which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the licensed trade repository or licensed foreign trade repository (as the case may be), for the person to remain in the appointment.

*[10/2013]*

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade

repository, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository, as the case may be.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository, the Authority may at any time, by written notice to the person and the licensed trade repository or licensed foreign trade repository (as the case may be), revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) —

(a) the act or purported act of the person is invalid and of no effect; and

(b) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) —

- (a) the act or purported act of the person is invalid and of no effect; and
- (b) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository —

- (a) if there is any conflict or inconsistency between —
  - (i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and
  - (ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the licensed trade repository or licensed foreign trade repository, as the case may be,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

- (b) no person may exercise any voting or other right attached to any share in the licensed trade repository or licensed foreign trade repository (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

**Duration of control**

**46ZID.**—(1) The Authority must cease to be in control of the relevant business of a licensed trade repository or licensed foreign trade repository when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 46ZIB(1)(c)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of a licensed trade repository or licensed foreign trade repository on the date of the statutory manager’s appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of a licensed trade repository or licensed foreign trade repository may be revoked by the Authority at any time —

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist; or
  - (ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 46ZIB(1)(c)(i) or for the protection of investors; or

(b) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the licensed trade repository or licensed foreign trade repository, as the case may be.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

- (a) the Authority's assumption of control of the relevant business of a licensed trade repository or licensed foreign trade repository;
- (b) the cessation of the Authority's control of the relevant business of a licensed trade repository or licensed foreign trade repository;
- (c) the appointment of a statutory manager in relation to the relevant business of a licensed trade repository or licensed foreign trade repository; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of a licensed trade repository or licensed foreign trade repository.

[10/2013]

### **Responsibilities of officers, member, etc., of licensed trade repository**

**46ZIE.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository —

- (a) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the licensed trade repository or licensed foreign trade repository (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the licensed trade repository or licensed foreign trade repository (as the case may be) which is comprised in, forms part of or relates to the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be), and which is in the person's possession or control; and

- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the licensed trade repository or licensed foreign trade repository (as the case may be) must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the licensed trade repository or licensed foreign trade repository (as the case may be), within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
- (b) in purported compliance with subsection (1)(b), knowingly or recklessly provides any information or document that 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 \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Remuneration and expenses of Authority and others in certain cases**

**46ZIF.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by a licensed trade repository or licensed foreign trade repository —

- (a) to a statutory manager or statutory adviser appointed in relation to the licensed trade repository or licensed foreign trade repository (as the case may be), whether or not the appointment has been revoked; and

- (b) where the Authority has assumed control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The licensed trade repository or licensed foreign trade repository (as the case may be) must reimburse the Authority any remuneration and expenses payable by the licensed trade repository or licensed foreign trade repository (as the case may be) to a statutory manager or statutory adviser.

[10/2013]

### **Power of Authority to make regulations**

**46ZJ.**—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to —

- (a) the grant of a trade repository licence or foreign trade repository licence;
- (b) the requirements applicable to a licensed trade repository or licensed foreign trade repository;
- (c) the measures that a licensed trade repository or licensed foreign trade repository must adopt for the purposes of managing or mitigating risks;
- (d) the maintenance of records of transactions reported to a licensed trade repository or licensed foreign trade repository; and
- (e) the submission of reports by a licensed trade repository or licensed foreign trade repository.

[34/2012]

(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and



- (b) for a penalty not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, for a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Power of Authority to issue directions**

**46ZK.**—(1) The Authority may issue directions, whether of a general or specific nature, by written notice, to a licensed trade repository or licensed foreign trade repository, if the Authority thinks it necessary or expedient —

- (a) for ensuring the safe and efficient operation of the licensed trade repository or licensed foreign trade repository, or of licensed trade repositories or licensed foreign trade repositories in general;
- (b) for ensuring the integrity and stability of the capital markets or the financial system;
- (c) in the interests of the public or a section of the public or for the protection of investors;
- (d) for the effective administration of this Act; or
- (e) for ensuring compliance with any condition or restriction that the Authority may impose under section 46E(3) or (4), 46K(2), 46U(5) or (10), 46V(11) or (12) or 46ZL(1) or (2), or such other obligations or requirements under this Act or as the Authority may prescribe.

[34/2012]

(2) Without limiting subsection (1), the Authority may issue directions, by written notice, to a licensed trade repository or licensed foreign trade repository —

- (a) with respect to the publication of any information relating to any transaction reported to the licensed trade repository or licensed foreign trade repository, as the case may be; or

- (b) for ensuring that the Authority and such other entities as the Authority may specify are provided with access to any information on any transaction reported to the licensed trade repository or licensed foreign trade repository.

[34/2012]

- (3) A licensed trade repository or licensed foreign trade repository must comply with every direction issued to it under subsection (1) or (2).

[34/2012]

- (4) Any licensed trade repository or licensed foreign trade repository which, without reasonable excuse, contravenes a direction issued to it under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

- (5) It is not necessary to publish any direction issued under subsection (1) or (2) in the *Gazette*.

[34/2012]

### **Power of Authority to exempt licensed trade repository or licensed foreign trade repository from provisions of this Part**

**46ZL.**—(1) Without affecting section 337(1), the Authority may, by regulations made under section 46ZJ, exempt any licensed trade repository, licensed foreign trade repository, or class of licensed trade repositories or licensed foreign trade repositories from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any licensed trade repository or licensed foreign trade repository from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the non-compliance by that licensed trade repository or licensed foreign trade repository with

that provision will not detract from the objectives specified in section 46A.

[34/2012]

(2A) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(2B) A licensed trade repository or licensed foreign trade repository, or any class of licensed trade repositories or class of licensed foreign trade repositories, that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(2C) A licensed trade repository or licensed foreign trade repository, or any class of licensed trade repositories or class of licensed foreign trade repositories, that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (2A).

[4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

*Division 5 — Voluntary Transfer of Business of  
Licensed Trade Repository or Licensed Foreign  
Trade Repository*

**Interpretation of this Division**

**46ZM.** In this Division, unless the context otherwise requires —

“business” includes affairs, property, right, obligation and liability;

“Court” means the General Division of the High Court;

“debenture” has the meaning given by section 4(1) of the Companies Act 1967;

“property” includes property, right and power of every description;

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means a licensed trade repository or licensed foreign trade repository, or a corporation which has applied or will be applying for a trade repository licence or foreign trade repository licence, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Division;

“transferor” means a licensed trade repository or licensed foreign trade repository the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

### **Voluntary transfer of business**

**46ZN.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of a licensed trade repository or licensed foreign trade repository) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of a licensed trade repository or licensed foreign trade repository; and
- (c) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of a licensed trade repository or licensed foreign trade repository to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(a) if the Authority is satisfied that —

- (a) the transferee is a fit and proper person; and

- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

(a) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(b) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that 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 \$200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

### **Approval of transfer**

**46ZO.**—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

- (2) Before making an application under subsection (1) —
- (a) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;
  - (b) the transferor must obtain the consent of the Authority under section 46ZN(1)(a);
  - (c) the transferor and the transferee must, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;
  - (d) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
  - (e) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and

- (f) unless the Court directs otherwise, the transferor and the transferee must serve on their respective participants affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

- (a) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
- (b) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 46ZN(1)(a) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
- (b) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not granted a trade repository licence or foreign trade repository licence by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being granted a trade repository licence or foreign trade repository licence by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;

- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) the provisions to be made for persons who are affected by the transfer;
- (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to any property which is held by the transferor as trustee; and
- (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]



(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

PART 3  
CLEARING FACILITIES

[34/2012]

### Objectives of this Part

47. The objectives of this Part are —

- (a) to promote safe and efficient clearing facilities; and
- (b) to reduce systemic risk.

[34/2012]

### Interpretation of this Part

48.—(1) In this Part, unless the context otherwise requires —

“default proceedings” means any proceedings or other action taken by an approved clearing house or a recognised clearing house under its default rules;

“default rules”, in relation to an approved clearing house or a recognised clearing house, means the business rules of the approved clearing house or recognised clearing house which provide for the taking of proceedings or other action if a participant has failed, or appears to be unable or to be likely to become unable, to meet the participant’s obligations for any unsettled or open market contract to which the participant is a party;

“defaulter” means a participant who is the subject of any default proceedings;

“foreign corporation” means a corporation which is incorporated or formed outside Singapore;

“market charge” means a security interest, whether fixed or floating, granted in favour of an approved clearing house, or a recognised clearing house, over market collateral;

“market collateral” means any property held by or deposited with an approved clearing house or a recognised clearing house, for the purpose of securing any liability arising directly in connection with the ensuring of the performance

of market contracts by the approved clearing house or recognised clearing house;

“market contract” means —

- (a) a contract subject to the business rules of an approved clearing house or a recognised clearing house, that is entered into between the approved clearing house or recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the approved clearing house or recognised clearing house; or
- (b) a transaction which is being cleared or settled using the clearing facility of an approved clearing house or a recognised clearing house, and in accordance with the business rules of the approved clearing house or recognised clearing house, whether or not a novation referred to in paragraph (a) is to take place;

“property”, in relation to a market charge or market collateral, means —

- (a) any money, letter of credit, banker’s draft, certified cheque, guarantee or other similar instrument;
- (b) any securities;
- (c) any unit in a collective investment scheme;
- (d) any derivatives contract; or
- (e) any other asset of value acceptable to an approved clearing house or a recognised clearing house;

“relevant office holder” means —

- (a) the Official Assignee exercising his or her powers under the Insolvency, Restructuring and Dissolution Act 2018;

- (b) a person acting in relation to a corporation as the liquidator, the provisional liquidator, the receiver, the receiver and manager or the judicial manager of the corporation, or acting in an equivalent capacity in relation to a corporation; or
- (c) a person acting in relation to an individual as the trustee in bankruptcy, or the interim receiver of the property, of the individual, or acting in an equivalent capacity in relation to an individual;

“settlement”, in relation to a market contract, includes partial settlement;

“Singapore corporation” means a corporation which is incorporated in Singapore.

[34/2012; 4/2017; 40/2018]

(2) Where a charge is granted partly for the purpose specified in the definition of “market charge” in subsection (1) and partly for any other purpose or purposes, the charge is treated as a market charge under this Part insofar as it has effect for that specified purpose.

[34/2012]

(3) Where any collateral is granted partly for the purpose specified in the definition of “market collateral” in subsection (1) and partly for any other purpose or purposes, the collateral is treated as market collateral under this Part insofar as it has been provided for that specified purpose.

[34/2012]

(4) Any references in this Part to the law of insolvency is a reference to —

(a) the Insolvency, Restructuring and Dissolution Act 2018;  
and

(b) [Deleted by Act 40 of 2018]

(c) any other written law, whether in Singapore or elsewhere, which is concerned with, or in any way related to, the bankruptcy or insolvency of a person, other than the Banking Act 1970.

[34/2012; 40/2018]

(5) Any reference in this Part to a settlement, in relation to a market contract, is a reference to the discharge of the rights and liabilities of the parties to the market contract, whether by performance, compromise or otherwise.

[34/2012]

### *Division 1 — Establishment of Clearing Facilities*

#### **Requirement for approval or recognition**

**49.**—(1) A person must not establish or operate a clearing facility, or hold out that the person is operating a clearing facility, unless the person is —

- (a) an approved clearing house; or
- (b) a recognised clearing house.

[34/2012]

(2) A person must not hold out that the person is —

- (a) an approved clearing house, unless the person is an approved clearing house; or
- (b) a recognised clearing house, unless the person is a recognised clearing house.

[34/2012]

(3) Except with the written approval of the Authority, no person, other than an approved clearing house or a recognised clearing house, may take or use, or have attached to or exhibited at any place —

- (a) the title or description “securities clearing house” or “futures clearing house” in any language; or
- (b) any title or description which resembles a title or description referred to in paragraph (a).

[34/2012]

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) Any person who contravenes subsection (2) 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 not exceeding \$2,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(6) Without affecting section 337(1), the Authority may, by regulations made under section 81Q, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(7) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 47.

[34/2012]

(8) It is not necessary to publish any exemption granted under subsection (7) in the *Gazette*.

[34/2012]

(9) The Authority may, at any time, by written notice —

- (a) add to the conditions and restrictions referred to in subsection (7); or
- (b) vary or revoke any condition or restriction referred to in that subsection.

[34/2012]

(10) Every corporation that is granted an exemption under subsection (6) must satisfy every condition or restriction imposed on it under that subsection.

[34/2012]

(11) Every corporation that is granted an exemption under subsection (7) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection or subsection (9).

[34/2012]

(12) Any corporation which contravenes subsection (10) or (11) shall be guilty of an offence and shall be liable on conviction to a fine

not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Application for approval or recognition**

**50.**—(1) A Singapore corporation may apply to the Authority to be —

- (a) approved as an approved clearing house; or
- (b) recognised as a recognised clearing house.

[34/2012]

(2) A foreign corporation may apply to the Authority to be recognised as a recognised clearing house.

[34/2012]

(3) An application under subsection (1) or (2) must be —

- (a) made in such form and manner as the Authority may prescribe; and
- (b) accompanied by a non-refundable prescribed application fee, which must be paid in the manner specified by the Authority.

[34/2012]

(4) The Authority may require an applicant to provide the Authority with such information or documents as the Authority considers necessary in relation to the application.

[34/2012]

### **Power of Authority to approve or recognise clearing house**

**51.**—(1) Where a Singapore corporation has made an application under section 50(1), the Authority may —

- (a) in the case of an application to be approved as an approved clearing house, approve the Singapore corporation as an approved clearing house; or
- (b) in the case of an application to be recognised as a recognised clearing house, recognise the Singapore corporation as a recognised clearing house.

[34/2012]

(2) Where a foreign corporation has made an application under section 50(2), the Authority may recognise the corporation as a recognised clearing house.

[34/2012]

(3) Despite subsection (1), the Authority may, with the consent of the applicant —

- (a) treat an application under section 50(1)(a) as an application under section 50(1)(b), if the Authority is of the opinion that the applicant would be more appropriately regulated as a recognised clearing house; or
- (b) treat an application under section 50(1)(b) as an application under section 50(1)(a), if the Authority is of the opinion that the applicant would be more appropriately regulated as an approved clearing house.

[34/2012]

(4) The Authority may approve a Singapore corporation as an approved clearing house under subsection (1)(a), recognise a Singapore corporation as a recognised clearing house under subsection (1)(b) or recognise a foreign corporation as a recognised clearing house under subsection (2), subject to such conditions or restrictions as the Authority thinks fit to impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to —

- (a) the activities that the corporation may undertake;
- (b) the products that may be cleared or settled by any clearing facility established or operated by the corporation; and
- (c) the nature of the investors or participants who may use or have an interest in any clearing facility established or operated by the corporation.

[34/2012]

(5) The Authority may, at any time, by written notice to the corporation, vary any condition or restriction or impose such further condition or restriction as the Authority may think fit.

[34/2012]

(6) An approved clearing house or a recognised clearing house must, for the duration of the approval or recognition, satisfy every



condition or restriction that may be imposed on it under subsection (4) or (5).

[34/2012]

(7) The Authority must not approve an applicant as an approved clearing house, or recognise an applicant as a recognised clearing house, unless the applicant meets such requirements, including minimum financial requirements, as the Authority may prescribe, either generally or specifically.

[34/2012]

(8) The Authority may refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, if —

- (a) the corporation has not provided the Authority with such information as the Authority may require, relating to —
  - (i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business; or
  - (ii) any circumstances likely to affect the corporation's manner of conducting business;
- (b) any information or document provided by the corporation to the Authority is false or misleading;
- (c) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (d) execution against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) a receiver, a receiver and manager, a judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;
- (f) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement

with the creditors of the corporation or shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;

- (g) the corporation, a substantial shareholder of the corporation or any officer of the corporation —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or
  - (ii) has been convicted of an offence under this Act committed before, on or after 1 August 2013;
- (h) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any clearing facility;
- (i) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (j) the Authority has reason to believe that the corporation may not be able to act in the best interests of investors or its members, participants or customers, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;
- (k) the Authority is not satisfied as to —
  - (i) the financial standing of the corporation or any of its substantial shareholders; or
  - (ii) the manner in which the business of the corporation is to be conducted;

- (l) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business which the corporation may carry on in connection with the establishment or operation of any clearing facility;
- (m) there are other circumstances which are likely to —
  - (i) lead to the improper conduct of business by the corporation or any of its officers, employees or substantial shareholders; or
  - (ii) reflect discredit on the manner of conducting the business of the corporation or any of its substantial shareholders;
- (n) in the case of any clearing facility that the corporation operates, the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a safe and efficient clearing facility;
- (o) the corporation does not satisfy the criteria prescribed under section 52 to be approved as an approved clearing house or recognised as a recognised clearing house, as the case may be; or
- (p) the Authority is of the opinion that it would be contrary to the interests of the public to approve or recognise the corporation.

[34/2012]

(9) Subject to subsection (10), the Authority must not refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, under subsection (8) without giving the corporation an opportunity to be heard.

[34/2012]

(10) The Authority may refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(11) The Authority must give notice in the *Gazette* of any corporation approved as an approved clearing house under subsection (1)(a) or recognised as a recognised clearing house under subsection (1)(b) or (2), and such notice may include all or any of the conditions and restrictions imposed by the Authority on the corporation under subsections (4) and (5).

[34/2012]

(12) Any applicant which is aggrieved by a refusal of the Authority to grant to the applicant an approval under subsection (1)(a) or a refusal of the Authority to recognise the applicant under subsection (1)(b) or (2) may, within 30 days after the applicant is notified of the refusal, appeal to the Minister, whose decision is final.

[34/2012]

(13) Any approved clearing house or recognised clearing house which contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **General criteria to be taken into account by Authority**

**52.—**(1) The Authority may prescribe the criteria which it may take into account for the purposes of deciding —

- (a) whether a Singapore corporation referred to in section 50(1) or 54(1) should be approved as an approved clearing house or recognised as a recognised clearing house;
- (b) whether a foreign corporation referred to in section 50(2) should be recognised as a recognised clearing house; and
- (c) whether an approved clearing house or a recognised clearing house that is subject to a review by the Authority under section 54(4) should be approved as an approved clearing house or recognised as a recognised clearing house.

[34/2012]

(2) Without affecting section 51 and subsection (1), the Authority may, for the purposes of deciding whether to recognise a foreign corporation as a recognised clearing house under section 51(2), have regard, in addition to any requirements prescribed under section 51(7) and any criteria prescribed under subsection (1), to —

- (a) whether adequate arrangements exist for co-operation between the Authority and the primary financial services regulatory authority responsible for the supervision of the foreign corporation in the country or territory in which the head office or principal place of business of the foreign corporation is situated; and
- (b) whether the foreign corporation is, in the country or territory in which the head office or principal place of business of the foreign corporation is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 47 are achieved, to the requirements and supervision to which approved clearing houses and recognised clearing houses are subject under this Act.

[34/2012]

(3) In considering whether a foreign corporation has met the requirements mentioned in subsection (2)(b), the Authority may have regard to —

- (a) the relevant laws and practices of the country or territory in which the head office or principal place of business of the foreign corporation is situated; and
- (b) the rules and practices of the foreign corporation.

[34/2012]

### **Annual fees payable by approved clearing house or recognised clearing house**

**53.**—(1) Every approved clearing house and every recognised clearing house must pay to the Authority such annual fees as may be prescribed in such manner as the Authority may specify.

[34/2012]

(2) The Authority may, where it considers appropriate, refund or remit the whole or any part of any annual fee paid or payable to it.

[34/2012]

### **Change in status**

**54.**—(1) A Singapore corporation which is an approved clearing house or a recognised clearing house may apply to the Authority to change its status in the manner referred to in subsection (5).

[34/2012]

(2) An application under subsection (1) must be —

- (a) made in such form and manner as the Authority may prescribe; and
- (b) accompanied by a non-refundable prescribed application fee, which must be paid in the manner specified by the Authority.

[34/2012]

(3) The Authority may require an applicant to provide the Authority with such information or documents as the Authority considers necessary in relation to the application.

[34/2012]

(4) The Authority may, on its own initiative, review the status of a Singapore corporation that is an approved clearing house or a recognised clearing house in accordance with the requirements

prescribed under section 51(7) and the criteria prescribed under section 52(1).

[34/2012]

(5) Where an application is made by a Singapore corporation under subsection (1), or where a review of the status of a Singapore corporation is conducted by the Authority under subsection (4), the Authority may —

- (a) if the corporation is an approved clearing house, withdraw the approval as such and recognise the corporation as a recognised clearing house under section 51(1)(b);
- (b) if the corporation is a recognised clearing house, withdraw the recognition as such and approve the corporation as an approved clearing house under section 51(1)(a); or
- (c) make no change to the status of the corporation as an approved clearing house or a recognised clearing house.

[34/2012]

(6) Where an application is made under subsection (1), the Authority must not exercise its power under subsection (5)(c) without giving the Singapore corporation an opportunity to be heard.

[34/2012]

(7) Where a review of the status of a Singapore corporation is conducted by the Authority on its own initiative under subsection (4), the Authority must not exercise its powers under subsection (5)(a) or (b) without giving the corporation an opportunity to be heard.

[34/2012]

(8) Any Singapore corporation which is aggrieved by a decision of the Authority made in relation to the corporation after a review under subsection (4) may, within 30 days after the corporation is notified of the decision, appeal to the Minister, whose decision is final.

[34/2012]

### **Cancellation of approval or recognition**

**55.—**(1) An approved clearing house or a recognised clearing house which intends to cease operating its clearing facility or, where it operates more than one clearing facility, all of its clearing facilities, may apply to the Authority to cancel its approval as an approved

clearing house or recognition as a recognised clearing house, as the case may be.

[34/2012]

(2) An application under subsection (1) must be made in such form and manner, and not later than such time, as the Authority may prescribe.

[34/2012]

(3) The Authority may cancel the approval of an approved clearing house, or the recognition of a recognised clearing house, on such application if the Authority is satisfied that —

- (a) the approved clearing house or recognised clearing house has ceased operating its clearing facility or all of its clearing facilities, as the case may be; and
- (b) the cancellation of the approval or recognition (as the case may be) will not detract from the objectives specified in section 47.

[34/2012]

### **Power of Authority to revoke approval and recognition**

**56.**—(1) The Authority may revoke any approval of a Singapore corporation as an approved clearing house under section 51(1)(a), any recognition of a Singapore corporation as a recognised clearing house under section 51(1)(b) or any recognition of a foreign corporation as a recognised clearing house under section 51(2), if —

- (a) there exists at any time a ground under section 51(7) or (8) on which the Authority may refuse an application;
- (b) the corporation does not commence operating its clearing facility, or, where it operates more than one clearing facility, all of its clearing facilities, within 12 months starting on the date on which it was granted the approval under section 51(1)(a) or was recognised under section 51(1)(b) or (2), as the case may be;
- (c) the corporation ceases to operate its clearing facility or, where it operates more than one clearing facility, all of its clearing facilities;



- (d) the corporation contravenes —
  - (i) any condition or restriction applicable in respect of its approval or recognition, as the case may be;
  - (ii) any direction issued to it by the Authority under this Act; or
  - (iii) any provision in this Act;
- (da) upon the Authority exercising any power under section 81SAA(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval or recognition, as the case may be;
- (e) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public; or
- (f) any information or document provided by the corporation to the Authority is false or misleading.

[34/2012; 10/2013; 4/2017; 31/2017]

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) any approval under section 51(1)(a) or recognition under section 51(1)(b) or (2) that was granted to a corporation without giving the corporation an opportunity to be heard.

[34/2012]

(3) The Authority may revoke an approval under section 51(1)(a), or a recognition under section 51(1)(b) or (2), that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

[34/2012]

(4) For the purposes of subsection (1)(c), a corporation is deemed to have ceased to operate its clearing facility if —

- (a) it has ceased to operate the clearing facility for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or
- (b) it has ceased to operate the clearing facility under a direction issued by the Authority under section 81R.

[34/2012]

(5) Any corporation which is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister, whose decision is final.

[34/2012]

(6) Despite the lodging of an appeal under subsection (5), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[34/2012]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he or she considers necessary to any action taken by the Authority under this section, and the modified action has effect from the date of the decision of the Minister.

[34/2012]

(8) Any revocation under subsection (1) or (3) of the approval or recognition of a corporation under section 51(1) or (2) does not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of a clearing facility operated by the corporation, whether the agreement,

transaction or arrangement was entered into before, on or after the revocation of the approval or recognition; or

- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[34/2012]

(9) The Authority must give notice in the *Gazette* of any revocation under subsection (1) or (3) of any approval or recognition of a corporation under section 51(1) or (2).

[34/2012]

### *Division 2 — Regulation of Approved Clearing Houses*

#### *Subdivision (1) — Obligations of approved clearing houses*

#### **General obligations**

**57.—(1)** An approved clearing house —

- (a) must operate a safe and efficient clearing facility;
- (b) must manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) must ensure that access for participation in its clearing facility is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of its facility and to protect the interests of the investing public;
- (e) must maintain business rules that make satisfactory provision for —
  - (i) the clearing facility to be operated in a safe and efficient manner; and
  - (ii) the proper regulation and supervision of its members;
- (f) must enforce compliance by its members with its business rules;

- (g) must have sufficient financial, human and system resources —
  - (i) to operate a safe and efficient clearing facility;
  - (ii) to meet contingencies or disasters; and
  - (iii) to provide adequate security arrangements;
- (h) must maintain governance arrangements that are adequate for the clearing facility to be operated in a safe and efficient manner; and
- (i) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

(2) The obligations imposed on an approved clearing house under this Act apply to all facilities for clearing or settlement operated by the approved clearing house.

[34/2012]

(3) Despite subsection (2), the Authority may by written notice exempt any clearing facility operated by an approved clearing house from all or any of the provisions of this Act, if the Authority is satisfied that such exemption would not detract from the objectives specified in section 47.

[34/2012]

(4) It is not necessary to publish any exemption granted under subsection (3) in the *Gazette*.

[34/2012]

(5) In subsection (1)(g), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[34/2012]

### **Obligation to notify Authority of certain matters**

**58.**—(1) An approved clearing house must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

- (a) any material change to the information provided by the approved clearing house in its application under section 50(1) or 54(1);
- (b) the carrying on of any business (called in this section a proscribed business) by the approved clearing house other than such business or such class of businesses prescribed by regulations made under section 81Q;
- (c) the acquisition by the approved clearing house of a substantial shareholding in any corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of businesses prescribed by regulations made under section 81Q;
- (d) the approved clearing house becoming aware of any financial irregularity or other matter which in its opinion —
  - (i) may affect its ability to discharge its financial obligations; or
  - (ii) may affect the ability of a member of the approved clearing house to meet its financial obligations to the approved clearing house;
- (e) the approved clearing house reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved clearing house;
- (f) any other matter that the Authority may —
  - (i) prescribe by regulations made under section 81Q for the purposes of this paragraph; or
  - (ii) specify by written notice to the approved clearing house in any particular case.

*[34/2012; 4/2017]*

(2) Without limiting section 81R(1), the Authority may, at any time after receiving a notice referred to in subsection (1), issue directions to the approved clearing house —

- (a) where the notice relates to a matter referred to in subsection (1)(b) —
- (i) to cease carrying on the proscribed business; or
  - (ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81R(1); or
- (b) where the notice relates to a matter referred to in subsection (1)(c) —
- (i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as the Authority considers appropriate; or
  - (ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81R(1).

[34/2012]

(3) An approved clearing house must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[34/2012]

(4) An approved clearing house must notify the Authority of any matter that the Authority may prescribe by regulations made under section 81Q for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[34/2012]

(5) An approved clearing house must notify the Authority of any matter that the Authority may specify by written notice to the approved clearing house, no later than such time as the Authority may specify in that notice.

[34/2012; 4/2017]

**Obligation to manage risks prudently, etc.**

**59.** Without limiting section 57(1)(b), an approved clearing house must ensure that the systems and controls concerning the assessment and management of risks of the clearing facility that the approved clearing house operates are adequate and appropriate for the scale and nature of its operations.

[4/2017]

**Obligation in relation to customers' money and assets held by approved clearing house**

**60.—(1)** Without affecting sections 81Q and 341, the Authority may make regulations —

- (a) relating to how any money or assets deposited with or paid to an approved clearing house by its members, for or in relation to any contracts of the customers of those members, are to be held by the approved clearing house and, in particular, requiring any such money or assets to be deposited in trust accounts or custody accounts;
- (b) relating to the circumstances under which, and the purposes for which, the money or assets referred to in paragraph (a) may be used by the approved clearing house;
- (c) relating to how the approved clearing house may invest the money or assets referred to in paragraph (a); and
- (d) for any other purpose relating to the handling of the money and assets referred to in paragraph (a).

[34/2012]

(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for a penalty not exceeding a fine of \$200,000 and, in the case of a continuing offence, for a further penalty not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

**Obligation to maintain proper records**

**61.**—(1) An approved clearing house must maintain a record of all transactions effected through its clearing facility.

[34/2012]

(2) The Authority may prescribe by regulations made under section 81Q —

- (a) the form and manner in which the record referred to in subsection (1) must be maintained;
- (b) the extent to which the record includes details of each transaction; and
- (c) the period of time that the record is to be maintained.

[34/2012]

**Obligation to submit periodic reports**

**62.** An approved clearing house must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

**Obligation to assist Authority**

**63.** An approved clearing house must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

- (a) the furnishing of such returns as the Authority may require for the proper administration of this Act; and
- (b) the provision of —
  - (i) such books and information as the Authority may require for the proper administration of this Act, being books and information —
    - (A) relating to the business of the approved clearing house; or
    - (B) in respect of any transaction or class of transactions cleared or settled by the approved clearing house; and



- (ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

### **Obligation to maintain confidentiality**

**64.**—(1) Subject to subsection (2), an approved clearing house and its officers and employees must maintain, and aid in maintaining, confidentiality of all user information that —

- (a) comes to the knowledge of the approved clearing house or any of its officers or employees; or
- (b) is in the possession of the approved clearing house or any of its officers or employees.

[34/2012]

(2) Subsection (1) does not apply to —

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;
- (b) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing an approved clearing house from entering into a written agreement with a user which obliges the approved clearing house to maintain a higher degree of confidentiality than that specified in this section.

[34/2012]

### **Penalties under this Subdivision**

**65.** Any approved clearing house which contravenes section 57(1), 58(1) or (3), 59, 61(1), 62, 63 or 64(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not

exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012; 4/2017]

*Subdivision (2) — Rules of approved clearing houses*

**Business rules of approved clearing houses**

**66.—(1)** Without limiting sections 57 and 81Q —

- (a) the Authority may prescribe the matters that an approved clearing house must provide for in the business rules of the approved clearing house; and
- (b) the approved clearing house must provide for those matters in its business rules.

[34/2012]

(2) An approved clearing house must not make any amendment to its business rules unless it complies with such requirements as the Authority may prescribe.

[34/2012]

(3) In this Subdivision, any reference to an amendment to a business rule is to be construed as a reference to a change to the scope of, or to any requirement, obligation or restriction under, the business rule, whether the change is made by an alteration to the text of the business rule or by any other notice issued by or on behalf of the approved clearing house.

[34/2012]

(4) Any approved clearing house which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

**Business rules of approved clearing houses have effect as contract**

**67.—(1)** The business rules of an approved clearing house are treated as, and are to operate as, a binding contract —

- (a) between the approved clearing house and each issuer;

- (b) between the approved clearing house and each participant;
- (c) between each issuer and each participant; and
- (d) between each participant and every other participant.

[4/2017]

(2) The approved clearing house, each issuer and each participant are treated as having agreed to observe, and to perform the obligations under, the provisions of the business rules that are in force for the time being, so far as those provisions are applicable to the approved clearing house, issuer or participant, as the case may be.

[4/2017]

(3) In this section, “issuer” means a person who issued or made available, or proposes to issue or make available, securities, securities-based derivatives contracts or units in a collective investment scheme that are cleared or settled by the approved clearing house.

[4/2017]

### **Power of court to order observance or enforcement of business rules**

**68.**—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of an approved clearing house fails to do so, the General Division of the High Court may, on the application of the Authority, the approved clearing house or a person aggrieved by the failure, and after giving the firstmentioned person an opportunity to be heard, make an order directing the firstmentioned person to comply with, observe, enforce or give effect to those business rules.

[34/2012; 40/2019]

(2) In this section, “person” includes an approved clearing house.

[34/2012]

(3) This section is in addition to, and not in derogation of, any other remedy available to the aggrieved person referred to in subsection (1).

[34/2012]

**Non-compliance with business rules not to substantially affect rights of person**

**69.** Any failure by an approved clearing house to comply with this Act or its business rules in relation to a matter does not prevent the matter from being treated, for the purposes of this Act, as done in accordance with the business rules, so long as the failure does not substantially affect the rights of any person entitled to require compliance with the business rules.

[34/2012]

*Subdivision (3) — Matters requiring approval of Authority***Control of substantial shareholding in approved clearing house**

**70.—(1)** A person must not enter into any agreement to acquire shares in an approved clearing house, being an agreement by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the approved clearing house, without first obtaining the approval of the Authority to enter into the agreement.

[34/2012]

(2) A person must not become either of the following without first obtaining the approval of the Authority:

- (a) a 12% controller of an approved clearing house;
- (b) a 20% controller of an approved clearing house.

[34/2012]

(3) In subsection (2) —

“12% controller”, in relation to an approved clearing house, means a person, not being a 20% controller, who alone or together with the person’s associates —

- (a) holds not less than 12% of the shares in the approved clearing house; or
- (b) is in a position to control not less than 12% of the votes in the approved clearing house;

“20% controller”, in relation to an approved clearing house, means a person who, alone or together with the person’s associates —

- (a) holds not less than 20% of the shares in the approved clearing house; or
- (b) is in a position to control not less than 20% of the votes in the approved clearing house.

[34/2012]

(4) In this section —

- (a) a person holds a share if —
  - (i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or
  - (ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;
- (b) a reference to the control of a percentage of the votes in an approved clearing house is to be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the approved clearing house; and
- (c) a person, *A*, is an associate of another person, *B*, if —
  - (i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister of *B*;
  - (ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;
  - (iii) [Deleted by Act 35 of 2014]
  - (iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in

accordance with the directions, instructions or wishes of *B*;

(v) *A* is a subsidiary of *B*;

(vi) [*Deleted by Act 35 of 2014*]

(vii) *A* is a body corporate in which *B*, whether alone or together with other associates of *B* as described in sub-paragraphs (ii), (iv) and (v), is in a position to control not less than 20% of the votes in *A*; or

(viii) [*Deleted by Act 35 of 2014*]

(ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved clearing house.

[34/2012; 35/2014]

(5) The Authority may grant its approval referred to in subsection (1) or (2) subject to such conditions or restrictions as the Authority may think fit.

[34/2012]

(6) Without affecting subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of an approved clearing house in which a substantial shareholder, 12% controller or 20% controller of the approved clearing house has an interest.

[34/2012]

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the memorandum or articles of association or other constituent document or documents of the approved clearing house —

- (a) no voting rights are exercisable in respect of the shares which are the subject of the direction;
- (b) the approved clearing house must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the approved clearing house, the approved clearing house must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

[34/2012]

(8) Any issue of shares by an approved clearing house in contravention of subsection (7)(b) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return those shares to the approved clearing house, upon which the approved clearing house must return to the person any payment received from the person in respect of those shares.

[34/2012]

(9) Any payment made by an approved clearing house in contravention of subsection (7)(c) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment that the person has received to the approved clearing house.

[34/2012]

(10) Without affecting sections 81SB(1) and 337(1), the Authority may, by regulations made under section 81Q, exempt all or any of the following from subsection (1) or (2), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

- (a) any person or class of persons;
- (b) any class or description of shares or interests in shares.

[34/2012]

(11) Without affecting sections 81SB(2) and 337(3) and (4), the Authority may, by written notice, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such

conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(12) It is not necessary to publish any exemption granted under subsection (11) in the *Gazette*.

[34/2012]

(13) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(14) Any person who contravenes subsection (7)(b) or (c), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Approval of chairperson, chief executive officer, director and key persons**

**71.—**(1) An approved clearing house must not appoint a person as its chairperson, chief executive officer or director unless the approved clearing house has obtained the approval of the Authority.

[34/2012]

(2) The Authority may, by written notice, require an approved clearing house to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved clearing house, and the approved clearing house must comply with the notice.

[34/2012]

(3) An application for approval under subsection (1) or (2) must be made in such form and manner as the Authority may prescribe.

[34/2012]



(4) Without limiting section 81Q and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

[34/2012]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under this section without giving the approved clearing house an opportunity to be heard.

[34/2012]

(6) The Authority may refuse an application for approval on any of the following grounds without giving the approved clearing house an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013 —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[34/2012]

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[34/2012]

(8) An approved clearing house must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairperson, chief executive officer or director or of any person referred to in any notice issued by the Authority to the approved clearing house under subsection (2).

[34/2012]

(9) The Authority may make regulations under section 81Q relating to the composition and duties of the board of directors or any committee of an approved clearing house.

[34/2012]

(10) In this section, “committee” includes any committee of directors, disciplinary committee or appeals committee of an approved clearing house, and any body responsible for disciplinary action against a member of an approved clearing house.

[34/2012]

(11) Without affecting sections 81SB(1) and 337(1), the Authority may, by regulations made under section 81Q, exempt any approved clearing house or class of approved clearing houses from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(12) Without affecting sections 81SB(2) and 337(3) and (4), the Authority may, by written notice, exempt any approved clearing house from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(13) It is not necessary to publish any exemption granted under subsection (12) in the *Gazette*.

[34/2012]

(14) Any approved clearing house which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012; 4/2017]

### **Listing of approved clearing houses on organised market**

**72.—**(1) The securities or securities-based derivatives contracts of an approved clearing house must not be listed for quotation on an organised market that is operated by any of its related corporations, unless the approved clearing house and the operator of the organised

market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of the trading of the securities or securities-based derivatives contracts (as the case may be) of the approved clearing house.

[4/2017]

(2) Where the securities or securities-based derivatives contracts of an approved clearing house are listed for quotation on an organised market operated by any of its related corporations, the Authority may act in place of the operator of the organised market in making decisions and taking action, or require the operator of the organised market to make decisions and to take action on behalf of the Authority, on —

- (a) the admission of the approved clearing house to, or the removal of the approved clearing house from, the official list of the organised market; and
- (b) the granting of approval for the securities or securities-based derivatives contracts (as the case may be) of the approved clearing house to be, or the stopping or suspending of the securities or securities-based derivatives contracts (as the case may be) of the approved clearing house from being, listed for quotation or quoted on the organised market.

[4/2017]

(3) The Authority may, by written notice to the operator of the organised market —

- (a) modify the listing rules of the organised market for the purpose of their application to the listing for quotation or trading of the securities or securities-based derivatives contracts of the approved clearing house; or
- (b) waive the application of any listing rule of the organised market to the approved clearing house.

[4/2017]

(4) Any approved clearing house which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Additional powers of Authority in respect of auditors**

**73.**—(1) If an auditor of an approved clearing house, in the course of the performance of his or her duties, becomes aware of any matter or irregularity referred to in the following paragraphs, he or she must immediately send to the Authority a written report of that matter or irregularity:

- (a) any matter which, in his or her opinion, adversely affects or may adversely affect the financial position of the approved clearing house to a material extent;
- (b) any matter which, in his or her opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;
- (c) any irregularity that has or may have a material effect upon the accounts of the approved clearing house, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.

[34/2012]

(2) An auditor of an approved clearing house shall not, in the absence of malice on his or her part, be liable to any action for defamation at the suit of any person in respect of any statement made in his or her report under subsection (1).

[34/2012]

(3) Subsection (2) does not restrict or affect any right, privilege or immunity that the auditor of an approved clearing house may have, apart from this section, as a defendant in an action for defamation.

[34/2012]

(4) The Authority may impose all or any of the following duties on an auditor of an approved clearing house, and the auditor must carry out the duties so imposed:

- (a) a duty to submit such additional information and reports in relation to his or her audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his or her audit of the business and affairs of the approved clearing house;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his or her audit, examination or establishment of procedure referred to in paragraph (b) or (c).

[34/2012]

(5) The approved clearing house must remunerate the auditor in respect of the discharge by the auditor of all or any of the duties referred to in subsection (4).

[34/2012]

#### *Subdivision (4) — Immunity*

### **Immunity from criminal or civil liability**

**74.**—(1) No criminal or civil liability shall be incurred by an approved clearing house, or by any person specified in subsection (2), for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of the obligations of the approved clearing house under this Act or under the business rules of the approved clearing house (including the default rules of the approved clearing house).

[34/2012]

(2) For the purposes of subsection (1), the specified person is any person acting on behalf of the approved clearing house, including —

- (a) any director of the approved clearing house; or
- (b) any member of any committee established by the approved clearing house.

[34/2012]

*Division 3 — Regulation of Recognised Clearing Houses***General obligations**

75.—(1) A recognised clearing house —

- (a) must operate a safe and efficient clearing facility;
- (b) must manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, must not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) must ensure that access for participation in its clearing facility is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of its facility and to protect the interests of the investing public;
- (e) must maintain business rules that make satisfactory provision for —
  - (i) the clearing facility to be operated in a safe and efficient manner; and
  - (ii) the proper regulation and supervision of its members;
- (f) must enforce compliance by its members with its business rules;
- (g) must have sufficient financial, human and system resources —
  - (i) to operate a safe and efficient clearing facility;
  - (ii) to meet contingencies or disasters; and
  - (iii) to provide adequate security arrangements;
- (h) must maintain governance arrangements that are adequate for the clearing facility to be operated in a safe and efficient manner; and

- (i) must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[34/2012]

(2) The obligations imposed on a recognised clearing house under this Act apply to all facilities for clearing or settlement operated by the recognised clearing house.

[34/2012]

(3) Despite subsection (2), the Authority may by written notice exempt any clearing facility operated by a recognised clearing house from all or any of the provisions of this Act, if the Authority is satisfied that such exemption would not detract from the objectives specified in section 47.

[34/2012]

(4) It is not necessary to publish any exemption granted under subsection (3) in the *Gazette*.

[34/2012]

(5) In subsection (1)(g), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[34/2012]

### **Obligation to notify Authority of certain matters**

**76.—**(1) A recognised clearing house must, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

- (a) any material change to the information provided by the recognised clearing house in its application under section 50(1) or (2) or 54(1);
- (b) the recognised clearing house becoming aware of any financial irregularity or other matter which in its opinion —
  - (i) may affect its ability to discharge its financial obligations; or
  - (ii) may affect the ability of a member of the recognised clearing house to meet its financial obligations to the recognised clearing house;

- (c) any other matter that the Authority may —
- (i) prescribe by regulations made under section 81Q for the purposes of this paragraph; or
  - (ii) specify by written notice to the recognised clearing house in any particular case.

[34/2012]

(2) A recognised clearing house must notify the Authority of any matter that the Authority may prescribe by regulations made under section 81Q for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[34/2012]

(3) A recognised clearing house must notify the Authority of any matter that the Authority may specify by written notice to the recognised clearing house, no later than such time as the Authority may specify in that notice.

[34/2012]

### **Obligation in relation to customers' money and assets held by recognised clearing house**

77.—(1) Without affecting sections 81Q and 341, the Authority may make regulations —

- (a) relating to how any money or assets deposited with or paid to a recognised clearing house by its members, for or in relation to any contracts of the customers of those members, are to be held by the recognised clearing house and, in particular, requiring any such money or assets to be deposited in trust accounts or custody accounts;
- (b) relating to the circumstances under which, and the purposes for which, the money or assets referred to in paragraph (a) may be used by the recognised clearing house;
- (c) relating to how the recognised clearing house may invest the money or assets referred to in paragraph (a); and



- (d) for any other purpose relating to the handling of the money or assets referred to in paragraph (a).

[34/2012]

(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for a penalty not exceeding a fine of \$150,000 and, in the case of a continuing offence, for a further penalty not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Obligation to maintain proper records**

**78.**—(1) A recognised clearing house must maintain a record of all transactions effected through its clearing facility.

[34/2012]

(2) The Authority may prescribe by regulations made under section 81Q —

- (a) the form and manner in which the record referred to in subsection (1) must be maintained;
- (b) the extent to which the record includes details of each transaction; and
- (c) the period of time that the record is to be maintained.

[34/2012]

### **Obligation to submit periodic reports**

**79.** A recognised clearing house must submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

[34/2012]

### **Obligation to assist Authority**

**80.** A recognised clearing house must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

- (a) the furnishing of such returns as the Authority may require for the proper administration of this Act; and
- (b) the provision of —
  - (i) such books and information as the Authority may require for the proper administration of this Act, being books and information —
    - (A) relating to the business of the recognised clearing house; or
    - (B) in respect of any transaction or class of transactions cleared or settled by the recognised clearing house; and
  - (ii) such other information as the Authority may require for the proper administration of this Act.

[34/2012]

### **Obligation to maintain confidentiality**

**81.**—(1) Subject to subsection (2), a recognised clearing house and its officers and employees must maintain, and aid in maintaining, confidentiality of all user information that —

- (a) comes to the knowledge of the recognised clearing house or any of its officers or employees; or
- (b) is in the possession of the recognised clearing house or any of its officers or employees.

[34/2012]

(2) Subsection (1) does not apply to —

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;
- (b) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[34/2012]

(3) To avoid doubt, nothing in this section is to be construed as preventing a recognised clearing house from entering into a written agreement with a user which obliges the recognised clearing house to maintain a higher degree of confidentiality than that specified in this section.

[34/2012]

### **Penalties under this Division**

**81A.** Any recognised clearing house which contravenes section 75(1), 76, 78(1), 79, 80 or 81(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

## *Division 4 — Insolvency*

### **Application of this Division**

**81B.** This Division applies to such transaction or class of transactions cleared or settled by any approved clearing house or recognised clearing house, or by any class of approved clearing houses or recognised clearing houses, and to such extent, as the Authority may prescribe.

[34/2012]

### **Proceedings of approved clearing house or recognised clearing house take precedence over law of insolvency**

**81C.—(1)** The following are not invalid to any extent at law by reason only of inconsistency with any written law or rule of law relating to the distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver, a receiver and manager or a person in an equivalent capacity over any of the assets of a person:

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;

- (d) a contract effected by an approved clearing house or a recognised clearing house for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;
- (e) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge;
- (i) any default proceedings.

[34/2012]

(2) A relevant office holder, or a court applying the law relating to insolvency in Singapore, must not exercise his, her or its power to prevent, or interfere with —

- (a) the settlement of a market contract in accordance with the business rules of an approved clearing house or a recognised clearing house, or any proceedings or other action taken under those business rules; or
- (b) any default proceedings.

[34/2012]

(3) Subsection (2) does not operate to prevent a relevant office holder from recovering an amount under section 81I after the completion of a specified event referred to in section 81I(3).

[34/2012]

(4) Where a participant which is also a bank licensed under the Banking Act 1970 becomes insolvent, the liabilities of the bank accorded priority under sections 61 and 62 of that Act and the Payment and Settlement Systems (Finality and Netting) Act 2002

have priority over any unsecured liabilities of the bank arising from and after the settlement of market contracts.

[34/2012]

(4A) Where a participant that is also a merchant bank licensed under the Banking Act 1970 becomes insolvent, the liabilities of the merchant bank accorded priority under section 62B of that Act and the Payment and Settlement Systems (Finality and Netting) Act 2002 have priorities over any unsecured liabilities of the merchant bank arising from and after the settlement of market contracts.

[1/2020]

(5) To avoid doubt, subsection (4) does not affect the settlement of market contracts in accordance with the business rules of an approved clearing house or a recognised clearing house.

[34/2012]

### **Supplementary provisions as to default proceedings**

**81D.**—(1) A court may, on the application of a relevant office holder, make an order to alter, or to release the relevant office holder from complying with, the functions of his or her office that are affected by default proceedings, if default proceedings have been, could be, or could have been, taken.

[34/2012]

(2) The functions of the relevant office holder are to be construed subject to an order made under subsection (1).

[34/2012]

(3) Section 210 of the Companies Act 1967 and sections 71, 129, 130(2), 133(1), 170(1), 187, 276, 325 and 327 of the Insolvency, Restructuring and Dissolution Act 2018 do not prevent, or interfere with, any default proceedings.

[40/2018]

### **Duty to report on completion of default proceedings**

**81E.**—(1) An approved clearing house or a recognised clearing house —

- (a) must, upon the conclusion of any default proceedings commenced by it, make a report on those proceedings stating (as the case may be) in respect of each defaulter who is a subject of those proceedings —

- (i) the net sum (if any) certified by it to be payable by or to the defaulter; or
  - (ii) the fact that no sum is so payable; and
- (b) may include in that report such other particulars in respect of those proceedings as it thinks fit.

[34/2012]

(2) An approved clearing house, or a recognised clearing house, which has made a report under subsection (1) must supply the report to —

- (a) the Authority;
- (b) any relevant office holder acting in relation to —
  - (i) the defaulter to whom the report relates; or
  - (ii) the estate of that defaulter; and
- (c) where there is no relevant office holder referred to in paragraph (b), the defaulter to whom the report relates.

[34/2012]

(3) The approved clearing house or recognised clearing house must publish a notice of the fact that a report has been made under subsection (1) in such manner as it thinks appropriate to bring that fact to the attention of the creditors of the defaulter to whom the report relates.

[34/2012]

(4) Where a relevant office holder or defaulter receives under subsection (2) a report made under subsection (1), the relevant office holder or defaulter must, at the request of a creditor of the defaulter to whom the report relates —

- (a) make the report available for inspection by the creditor; and
- (b) on payment of such reasonable fee as the relevant office holder or defaulter (as the case may be) determines, supply to the creditor the whole or any part of that report.

[34/2012]

(5) In subsections (2), (3) and (4), “report” includes a copy of a report.

[34/2012]

### **Net sum payable on completion of default proceedings**

**81F.**—(1) This section applies to any net sum certified under section 81E(1)(a)(i) by an approved clearing house or a recognised clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

[34/2012]

(2) Despite sections 218, 219, 345 and 346 of the Insolvency, Restructuring and Dissolution Act 2018, where, on or after 1 August 2013, a receiving order or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum as certified under section 81E(1)(a)(i) is —

- (a) provable in the bankruptcy or winding up or payable to the relevant office holder, as the case may be; and
- (b) to be taken into account, where appropriate, under section 219 or 346 of the Insolvency, Restructuring and Dissolution Act 2018.

[34/2012; 40/2018]

### **Disclaimer of onerous property, rescission of contracts, etc.**

**81G.**—(1) Sections 230, 231, 373 and 374 of the Insolvency, Restructuring and Dissolution Act 2018 do not apply to —

- (a) a market contract;
- (b) a contract effected by an approved clearing house, or a recognised clearing house, for the purpose of realising property provided as market collateral;
- (c) a market charge; or
- (d) any default proceedings.

[34/2012; 40/2018]

(2) Sections 130(1), 170(1) and 328 of the Insolvency, Restructuring and Dissolution Act 2018 do not apply to any act, matter or thing which has been done under —

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by an approved clearing house, or a recognised clearing house, for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;
- (e) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge; or
- (i) any default proceedings.

[34/2012; 40/2018]

### **Adjustment of prior transactions**

**81H.**—(1) No order may be made, on or after 1 August 2013, in relation to any matter to which this section applies, by a court under any of the following provisions in any proceedings, whether instituted before, on or after 1 August 2013:

section 224, 225, 228, 361, 362, 366 or 438 of the Insolvency, Restructuring and Dissolution Act 2018.

[34/2012; 40/2018]

- (2) The matters to which this section applies are as follows:
- (a) a market contract;
  - (b) a disposition of property pursuant to a market contract;
  - (c) the provision of market collateral;



- (d) a contract effected by an approved clearing house, or a recognised clearing house, for the purpose of realising property provided as market collateral;
- (e) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge;
- (i) any default proceedings.

[34/2012]

**Right of relevant office holder to recover certain amounts arising from certain transactions**

**81I.**—(1) Where a participant (called in this section the first participant) sells securities, securities-based derivatives contracts or units in a collective investment scheme at an over-value to, or purchases securities, securities-based derivatives contracts or units in a collective investment scheme at an under-value from, another participant (called in this section the second participant) in the circumstances referred to in subsection (3), and thereafter a relevant office holder acts for —

- (a) the second participant;
- (b) the principal of the second participant in the sale or purchase; or
- (c) the estate of the second participant or person referred to in paragraph (b),

then, unless a court otherwise orders, the relevant office holder may recover from the first participant, or the principal of the first participant, an amount equal to the specified gain obtained under the

sale or purchase by the first participant, or the principal of the first participant.

[34/2012; 4/2017]

(2) The amount equal to the specified gain is recoverable even if the sale or purchase may have been discharged according to the business rules of an approved clearing house, or a recognised clearing house, and replaced by a market contract.

[34/2012]

(3) The circumstances referred to in subsection (1) are that —

(a) a specified event has occurred in relation to the second participant, or the principal of the second participant, within the period of 6 months immediately following the date on which the sale or purchase was entered into; and

(b) at the time the sale or purchase was entered into, the first participant, or the principal of the first participant, knew, or ought reasonably to have known, that a specified event was likely to occur in relation to the second participant, or the principal of the second participant.

[34/2012]

(4) In this section —

“specified event”, in relation to the second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means —

(a) the making of a bankruptcy order against the second participant or that person, as the case may be;

(b) the making of a statutory declaration in respect of the second participant or that person (as the case may be) under section 161(1) of the Insolvency, Restructuring and Dissolution Act 2018;

(c) the summoning of a meeting of creditors in relation to the second participant or that person (as the case may be) under section 166 of the Insolvency, Restructuring and Dissolution Act 2018;

- (d) the making of an application for the winding up of the second participant or that person (as the case may be) before a court; or
- (e) the appointment of a judicial manager under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 in respect of the second participant or that person, as the case may be;

“specified gain”, in relation to a sale or purchase referred to in subsection (1), means the difference, as at the time the sale or purchase was entered into, between —

- (a) the market value of the securities, securities-based derivatives contracts or units in a collective investment scheme which are the subject of the sale or purchase; and
- (b) the value of the consideration for the sale or purchase.

*[34/2012; 4/2017; 40/2018]*

**Application of market collateral not affected by certain other interest, etc.**

**81J.**—(1) This section has effect with respect to the application by an approved clearing house, or a recognised clearing house, of property provided as market collateral (called in this section the property).

*[34/2012]*

(2) The property may be applied in accordance with the business rules or default rules of the approved clearing house or recognised clearing house, so far as it is necessary for it to be so applied, despite —

- (a) any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the approved clearing house or recognised clearing house had actual notice of the interest, right or breach of duty (other than any interest or right arising from the situation referred to in paragraph (b)) (as the case may be) at the time the property was provided as market collateral; or

- (b) that the property is deposited by the approved clearing house or recognised clearing house in a trust account held for the benefit of a participant.

[34/2012]

(3) No right or remedy arising subsequent to the provision of the property as market collateral may be enforced to prevent, or interfere with, the application of the property by the approved clearing house or recognised clearing house in accordance with its business rules or default rules.

[34/2012]

(4) Where an approved clearing house, or a recognised clearing house, has power under this section to apply the property despite an interest, a right or a remedy, a person to whom the approved clearing house or recognised clearing house disposes of the property in accordance with its business rules or default rules takes free from that interest, right or remedy.

[34/2012]

### **Enforcement of judgments over property subject to market charge, etc.**

**81K.**—(1) Where, whether before, on or after 1 August 2013, any property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of any judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in, or security over, the property, except with the consent of the approved clearing house or recognised clearing house in favour of which the market charge was granted.

[34/2012]

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or an order against any property, any injunction or other remedy granted by any court with a view to facilitating the enforcement of any such judgment or order does not extend to that property.

[34/2012]

**Law of insolvency in other jurisdictions**

**81L.**—(1) Despite any other written law or rule of law, a court is not to recognise or give effect to —

- (a) an order of a court exercising jurisdiction under the law of insolvency in any place outside Singapore; or
- (b) an act of a person appointed in any place outside Singapore to perform a function under the law of insolvency in that place,

insofar as the making of the order by a court in Singapore, or the doing of the act by a relevant office holder, would be prohibited under this Act.

[34/2012]

(2) In this section, “law of insolvency”, in relation to a place outside Singapore, means any law of that place which is similar to, or serves the same purposes as, any part of the law of insolvency in Singapore.

[34/2012]

**Participant to be party to certain transactions as principal**

**81M.**—(1) Where —

- (a) a participant, in the participant’s capacity as such, enters into any transaction (including a market contract) with an approved clearing house or a recognised clearing house; and
- (b) but for this subsection or any provision in the business rules or default rules of the approved clearing house or recognised clearing house, the participant would be a party to that transaction as agent,

then, despite any other written law or rule of law, as between, and only as between, the approved clearing house or recognised clearing house and the participant or the person who is the participant’s principal in respect of that transaction, the participant is, for all purposes (including any action, claim or demand, whether civil or criminal), deemed to be a party to that transaction as principal, and not as agent.

[34/2012]

(2) Where —

- (a) 2 or more participants, in their capacities as such, enter into any transaction; and
- (b) but for this subsection, any of the participants would be a party to that transaction as agent,

then, despite any other written law or rule of law, except as between, and only as between, a participant to whom paragraph (b) applies and the person who is the participant's principal in respect of that transaction, the participant is, for all purposes (including any action, claim or demand, whether civil or criminal), deemed to be a party to that transaction as principal, and not as agent.

[34/2012]

**Preservation of rights, etc.**

**81N.** Except to the extent that it expressly provides, this Division does not operate to limit, restrict or otherwise affect —

- (a) any right, title, interest, privilege, obligation or liability of a person; or
- (b) any investigation, legal proceedings or remedy in respect of any such right, title, interest, privilege, obligation or liability.

[34/2012]

**Immunity from criminal or civil liability**

**81O.**—(1) No criminal or civil liability is incurred by —

- (a) a person discharging, by virtue of a delegation under the default rules of an approved clearing house or a recognised clearing house, an obligation of the approved clearing house or recognised clearing house in connection with any default proceedings; or
- (b) any person acting on behalf of a person referred to in paragraph (a), including —
  - (i) any member of the board of directors of the person referred to in paragraph (a); and

- (ii) any member of any committee established by the person referred to in paragraph (a),

for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of that obligation.

[34/2012]

(2) Where a relevant office holder takes action in relation to any property of a defaulter which is liable to be dealt with in accordance with the default rules of an approved clearing house or a recognised clearing house, and the relevant office holder reasonably believes or has reasonable grounds for believing that the relevant office holder is entitled to take that action, the relevant office holder shall not be liable to any person in respect of any loss or damage resulting from any action of the relevant office holder, except insofar as the loss or damage (as the case may be) is caused by the negligence of the relevant office holder.

[34/2012]

### *Division 5 — General Powers of Authority*

#### **Power of Authority to remove officers**

**81P.**—(1) Where the Authority is satisfied that any of the following applies to an officer of an approved clearing house or a recognised clearing house (such approved clearing house or recognised clearing house being a Singapore corporation), the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice direct the approved clearing house or recognised clearing house to remove the officer from his or her office or employment, and the approved clearing house or recognised clearing house must comply with the notice, despite section 152 of the Companies Act 1967 or anything in any other law or in the memorandum or articles of association or other constituent document or documents of the approved clearing house or recognised clearing house:

- (a) the officer has wilfully contravened, or wilfully caused the approved clearing house or recognised clearing house to

contravene, this Act or the business rules of the approved clearing house or recognised clearing house;

- (b) the officer has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules of the approved clearing house or recognised clearing house, by the approved clearing house or recognised clearing house, by a member of the approved clearing house or recognised clearing house or by a person associated with that member;
- (c) the officer has failed to discharge the duties or functions of his or her office or employment;
- (d) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) the officer has had execution against him or her in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) the officer has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;
- (g) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013, involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly.

[34/2012]

(2) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved clearing house, or a recognised clearing house, has failed to discharge the duties or functions of his or her office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

[34/2012]

(3) Subject to subsection (4), the Authority must not direct an approved clearing house, or a recognised clearing house, to remove an officer from his or her office or employment without giving the



approved clearing house or recognised clearing house an opportunity to be heard.

[34/2012]

(4) The Authority may direct an approved clearing house, or a recognised clearing house, to remove an officer from his or her office or employment under subsection (1) on any of the following grounds without giving the approved clearing house or recognised clearing house an opportunity to be heard:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 1 August 2013 —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[34/2012]

(5) Where the Authority directs an approved clearing house, or a recognised clearing house, to remove an officer from his or her office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

[34/2012]

(6) Any approved clearing house or recognised clearing house that is aggrieved by a direction of the Authority made in relation to the approved clearing house or recognised clearing house under subsection (1) may, within 30 days after the approved clearing house or recognised clearing house is notified of the direction, appeal to the Minister, whose decision is final.

[34/2012]

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[34/2012]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect from the date of the Minister's decision.

[34/2012]

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by an approved clearing house, or a recognised clearing house, in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[34/2012]

(10) Any approved clearing house or recognised clearing house which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Power of Authority to make regulations**

**81Q.**—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations —

- (a) relating to the approval of approved clearing houses and the recognition of recognised clearing houses;
- (b) relating to the requirements applicable to any person who establishes, operates or assists in establishing or operating a clearing facility, whether or not the person is approved as an approved clearing house under section 51(1)(a) or recognised as a recognised clearing house under section 51(1)(b) or (2); and
- (c) for the purposes of section 59 and, in particular, specifying measures to manage any risks assumed by an approved clearing house.

[34/2012; 4/2017]

- (2) Regulations made under this section may provide —
- (a) that a contravention of any specified provision thereof shall be an offence; and
  - (b) for a penalty not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, for a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Power of Authority to issue directions**

**81R.**—(1) The Authority may issue directions, whether of a general or specific nature, by written notice, to an approved clearing house or a recognised clearing house, if the Authority thinks it necessary or expedient —

- (a) for ensuring the safe and efficient operation of any clearing facility operated by the approved clearing house or recognised clearing house, or of clearing facilities, operated by approved clearing houses or recognised clearing houses, in general;
- (b) for ensuring the integrity and stability of the capital markets or the financial system;
- (c) in the interests of the public or a section of the public or for the protection of investors;
- (d) for the effective administration of this Act; or
- (e) for ensuring compliance with any condition or restriction that the Authority may impose under section 58(2), 70(5) or (10), 71(11) or (12) or 81SB(1) or (2), or such other obligations or requirements under this Act or as the Authority may prescribe.

[34/2012]

(2) An approved clearing house or a recognised clearing house must comply with every direction issued to it under subsection (1).

[34/2012]

(3) Any approved clearing house or recognised clearing house which, without reasonable excuse, contravenes a direction issued to it under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

### **Emergency powers of Authority**

**81S.**—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may direct by written notice an approved clearing house or a recognised clearing house to take such action as the Authority considers necessary to maintain or restore the safe and efficient operation of the clearing facilities operated by the approved clearing house or recognised clearing house.

[34/2012]

(2) Without affecting subsection (1), the actions which the Authority may direct an approved clearing house or a recognised clearing house to take include —

- (a) ordering the liquidation of all positions or any part thereof, or the reduction of such positions;
- (b) altering the conditions of delivery of transactions cleared or settled, or to be cleared or settled, through the clearing facility;
- (c) fixing the settlement price at which transactions are to be liquidated;
- (d) requiring margins or additional margins for transactions cleared or settled, or to be cleared or settled, through the clearing facility; and

- (e) modifying or suspending any of the business rules of the approved clearing house or recognised clearing house.

[34/2012]

(3) Where an approved clearing house or a recognised clearing house fails to comply with any direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may —

- (a) set margin levels for transactions cleared or settled, or to be cleared or settled, through the clearing facility to cater for the emergency;
- (b) set limits that may apply to positions acquired in good faith prior to the date of the notice issued by the Authority; or
- (c) take such other action as the Authority thinks fit to maintain or restore the safe and efficient operation of the clearing facilities operated by the approved clearing house or recognised clearing house.

[34/2012]

(4) In this section, “emergency” means any threatened or actual market manipulation or cornering, and includes —

- (a) any act of any government affecting any commodity or financial instrument;
- (b) any major market disturbance which prevents a market from accurately reflecting the forces of supply and demand for any commodity or financial instrument; or
- (c) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

[34/2012; 4/2017]

(5) The Authority may modify any action taken by an approved clearing house or a recognised clearing house under subsection (1), including the setting aside of that action.

[34/2012]

(6) Any person who is aggrieved by any action taken by the Authority, or by an approved clearing house or a recognised clearing house, under this section may, within 30 days after the person is notified of the action, appeal to the Minister, whose decision is final.

[34/2012]

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority, or by an approved clearing house or recognised clearing house, under this section continues to have effect pending the Minister's decision.

[34/2012]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he or she considers necessary to any action taken by the Authority, or by an approved clearing house or a recognised clearing house, under this section, and any such modified action has effect from the date of the Minister's decision.

[34/2012]

(9) Any approved clearing house or recognised clearing house which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Interpretation of sections 81SA to 81SAE**

**81SA.** In this section and sections 81SAA to 81SAE, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to an approved clearing house or a recognised clearing house, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved clearing house or recognised clearing house (as the case may be), or acting in an equivalent capacity in relation to the approved clearing house or recognised clearing house (as the case may be);

“relevant business” means any business of an approved clearing house or a recognised clearing house —

(a) which the Authority has assumed control of under section 81SAA; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 81SAA;

“statutory adviser” means a statutory adviser appointed under section 81SAA;

“statutory manager” means a statutory manager appointed under section 81SAA.

[10/2013]

**Action by Authority if approved clearing house or recognised clearing house unable to meet obligations, etc.**

**81SAA.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

- (a) an approved clearing house or a recognised clearing house informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (b) an approved clearing house or a recognised clearing house becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that an approved clearing house or a recognised clearing house —
  - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 47;
  - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
  - (iii) has contravened any of the provisions of this Act; or
  - (iv) has failed to comply with any condition or restriction imposed on it under section 51(4) or (5); or

- (d) the Authority considers it in the public interest to do so.  
[10/2013]
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the approved clearing house or recognised clearing house (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
  - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved clearing house or recognised clearing house (as the case may be) on the proper management of such of the business of the approved clearing house or recognised clearing house (as the case may be) as the Authority may determine; or
  - (c) assume control of and manage such of the business of the approved clearing house or recognised clearing house (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.  
[10/2013]
- (3) In the case of a recognised clearing house which is incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the recognised clearing house under subsection (2) is only in relation to —
- (a) the business or affairs of the recognised clearing house carried on in, or managed in or from, Singapore; or
  - (b) the property of the recognised clearing house located in Singapore, or reflected in the books of the recognised clearing house in Singapore (as the case may be) in relation to its operations in Singapore.  
[10/2013]
- (4) Where the Authority appoints 2 or more persons as the statutory manager of an approved clearing house or a recognised clearing house, the Authority must specify, in the terms and conditions of the



appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) must be discharged or exercised by such persons jointly; and
- (c) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 56(1)(*da*), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

- (a) the exercise or purported exercise of any power under this Act;
- (b) the performance or purported performance of any function or duty under this Act; or
- (c) the compliance or purported compliance with this Act.

[10/2013]

(7) Any approved clearing house or recognised clearing house that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a

continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Effect of assumption of control under section 81SAA**

**81SAB.**—(1) Upon assuming control of the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager —

- (a) must manage the relevant business of the approved clearing house or recognised clearing house (as the case may be) in the name of and on behalf of the approved clearing house or recognised clearing house (as the case may be); and
- (b) is deemed to be an agent of the approved clearing house or recognised clearing house (as the case may be).

[10/2013]

(3) In managing the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager —

- (a) must consider the interests of the public or the section of the public referred to in section 81SAA(1)(c)(i), and the need to protect investors; and
- (b) has all the duties, powers and functions of the members of the board of directors of the approved clearing house or recognised clearing house (as the case may be) (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the approved clearing house or recognised clearing house (as the case may be), including powers of delegation, in relation to the relevant business of the approved clearing

house or recognised clearing house (as the case may be); but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved clearing house or recognised clearing house (as the case may be) under the Companies Act 1967 or the constitution of the approved clearing house or recognised clearing house (as the case may be).

*[10/2013]*

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of an approved clearing house or a recognised clearing house by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be), which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the approved clearing house or recognised clearing house (as the case may be), for the person to remain in the appointment.

*[10/2013]*

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the approved clearing house or recognised clearing house, as the case may be.

*[10/2013]*

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved clearing house or a recognised clearing house, the Authority may at any time, by written notice to the person and the approved clearing house or recognised clearing house (as the case may be), revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

*[10/2013]*

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved clearing house or a recognised clearing house is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved clearing house or recognised clearing house (as the case may be) —

(a) the act or purported act of the person is invalid and of no effect; and

(b) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved clearing house or a recognised clearing house in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved clearing house or recognised clearing house (as the case may be) —

(a) the act or purported act of the person is invalid and of no effect; and

(b) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house —

(a) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer,

employee, agent or office holder, or the board of directors, of the approved clearing house or recognised clearing house, as the case may be,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

- (b) no person may exercise any voting or other right attached to any share in the approved clearing house or recognised clearing house (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013; 4/2017]

### **Duration of control**

**81SAC.**—(1) The Authority must cease to be in control of the relevant business of an approved clearing house or a recognised clearing house when the Authority is satisfied that —

- (a) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 81SAA(1)(c)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of an approved clearing house or a recognised clearing house on the date of the statutory manager's appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of an approved clearing house or a recognised clearing house may be revoked by the Authority at any time —

(a) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist;  
or

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 81SAA(1)(c)(i) or for the protection of investors; or

(b) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the approved clearing house or recognised clearing house, as the case may be.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(a) the Authority's assumption of control of the relevant business of an approved clearing house or a recognised clearing house;

(b) the cessation of the Authority's control of the relevant business of an approved clearing house or a recognised clearing house;

(c) the appointment of a statutory manager in relation to the relevant business of an approved clearing house or a recognised clearing house; and

(d) the revocation of a statutory manager's appointment in relation to the relevant business of an approved clearing house or a recognised clearing house.

[10/2013]

**Responsibilities of officers, member, etc., of approved clearing house or recognised clearing house**

**81SAD.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house —

- (a) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved clearing house or recognised clearing house (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved clearing house or recognised clearing house (as the case may be) which is comprised in, forms part of or relates to the relevant business of the approved clearing house or recognised clearing house (as the case may be), and which is in the person's possession or control; and
- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved clearing house or recognised clearing house (as the case may be) must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved clearing house or recognised clearing house (as the case may be), within such time and in such manner as the Authority or statutory manager may specify.

*[10/2013; 40/2019]*

- (2) Any person who —
- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
  - (b) in purported compliance with subsection (1)(b), knowingly or recklessly provides any information or document that 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 \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Remuneration and expenses of Authority and others in certain cases**

**81SAE.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved clearing house or a recognised clearing house —

- (a) to a statutory manager or statutory adviser appointed in relation to the approved clearing house or recognised clearing house (as the case may be), whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the approved clearing house or recognised clearing house (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The approved clearing house or recognised clearing house (as the case may be) must reimburse the Authority any remuneration and expenses payable by the approved clearing house or recognised clearing house (as the case may be) to a statutory manager or statutory adviser.

[10/2013]



**Power of Authority to exempt approved clearing house or recognised clearing house from provisions of this Part**

**81SB.**—(1) Without affecting section 337(1), the Authority may, by regulations made under section 81Q, exempt any approved clearing house, recognised clearing house, or class of approved clearing houses or recognised clearing houses from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any approved clearing house or recognised clearing house from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the non-compliance by that approved clearing house or recognised clearing house with that provision will not detract from the objectives specified in section 47.

[34/2012]

(2A) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(2B) An approved clearing house or a recognised clearing house, or any class of approved clearing houses or class of recognised clearing houses, that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(2C) An approved clearing house or a recognised clearing house, or any class of approved clearing houses or class of recognised clearing houses, that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (2A).

[4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

*Division 6 — Voluntary Transfer of Business of  
Approved Clearing House or Recognised  
Clearing House*

**Interpretation of this Division**

**81SC.** In this Division, unless the context otherwise requires —

“business” includes affairs, property, right, obligation and liability;

“Court” means the General Division of the High Court;

“debenture” has the meaning given by section 4(1) of the Companies Act 1967;

“property” includes property, right and power of every description;

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means an approved clearing house or a recognised clearing house, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved clearing house or a recognised clearing house, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Division;

“transferor” means an approved clearing house or a recognised clearing house the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

**Voluntary transfer of business**

**81SD.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved clearing house or a recognised clearing house) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved clearing house or a recognised clearing house; and
- (c) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of an approved clearing house or a recognised clearing house to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(a) if the Authority is satisfied that —

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

- (8) Any person who —
- (a) without reasonable excuse, fails to comply with any requirement under subsection (7); or
  - (b) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that 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 \$200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

### **Approval of transfer**

**81SE.**—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

- (2) Before making an application under subsection (1) —
- (a) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;
  - (b) the transferor must obtain the consent of the Authority under section 81SD(1)(a);
  - (c) the transferor and the transferee must, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;

- (d) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
- (e) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
- (f) unless the Court directs otherwise, the transferor and the transferee must serve on their respective participants affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

- (a) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
- (b) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 81SD(1)(a) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or

(b) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not approved as an approved clearing house or recognised as a recognised clearing house by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being approved as an approved clearing house or recognised as a recognised clearing house by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) the provisions to be made for persons who are affected by the transfer;
- (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to any property which is held by the transferor as trustee; and
- (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the

construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a

continuing offence, to a further fine not exceeding \$200 for every day or part of a day during which the offence continues after conviction.  
[10/2013]

## PART 3AA

### CENTRAL DEPOSITORY SYSTEM

#### **Interpretation of this Part**

**81SF.** In this Part, unless the context otherwise requires —

“account holder” means a person who has an account directly with the Depository and not through a depository agent;

“bare trustee” means a trustee who has no beneficial interest in the subject matter of the trust;

“book-entry securities”, in relation to the Depository, means securities —

- (a) the documents evidencing title to which are deposited by a depositor with the Depository and are registered in the name of the Depository or its nominee; and
- (b) which are transferable by way of book-entry in the Depository Register and not by way of an instrument of transfer;

“Central Depository System” means the Central Depository System referred to in section 81SH(1);

“constitution” means —

- (a) the constitution;
- (b) the memorandum of association, the articles of association, or both; or
- (c) any other constitutive document,

of a corporation;

“Court” means the General Division of the High Court;

“debenture” has the meaning given by section 4(1) of the Companies Act 1967;



“depositor” means an account holder or a depository agent but does not include a sub-account holder;

“Depository” means The Central Depository (Pte) Limited or any other corporation approved by the Authority as a depository company or corporation for the purposes of this Act, which operates the Central Depository System for the holding and transfer of book-entry securities;

“depository agent” means a member of the SGX-ST, a trust company (licensed under the Trust Companies Act 2005), a bank licensed under the Banking Act 1970, any merchant bank licensed under the Banking Act 1970 or any other person or body approved by the Depository who or which —

- (a) performs services as a depository agent for sub-account holders in accordance with the terms of a depository agent agreement entered into between the Depository and the depository agent;
- (b) deposits book-entry securities with the Depository on behalf of the sub-account holders; and
- (c) establishes an account in its name with the Depository;

“Depository Register” means a register maintained by the Depository in respect of book-entry securities;

“depository rules” means the rules made by the Depository in relation to the operation of the Central Depository System and includes the Central Depository Rules and Procedures made by the Depository pursuant to its constitution (as the same may be amended from time to time) and any rule made by the Depository with regard to payment of fees to the Depository;

“derivative instruments”, in relation to debentures, stocks and shares, includes warrants, transferable subscription rights, options to subscribe for stocks or shares, convertibles, depository receipts and such other instruments as the Authority may prescribe by regulations for the purposes of the definition;

“documents evidencing title” means —

- (a) in the case of stocks, shares, debentures or any derivative instruments related thereto of a company or debentures or any derivative instruments related thereto of the Government — the stock certificates, share certificates, debenture certificates or certificates representing the derivative instrument, as the case may be; and
- (b) in the case of stocks, shares, debentures or any derivative instruments related thereto of a foreign company or debentures or any derivative instruments related thereto of a foreign government or of an international body, or any other securities — such documents or other evidence of title thereto, as the Depository may require;

“instrument” includes a deed or any other instrument in writing;

“international body” means the Asian Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the European Bank for Reconstruction and Development and such other international bodies as the Authority may prescribe by regulations;

“securities” has the meaning given by section 2(1), but includes derivative instruments;

“SGX-ST” means the Singapore Exchange Securities Trading Limited;

“sub-account holder” means a holder of an account maintained with a depository agent.

[36/2014; 40/2019; 1/2020]

### **Application of this Part**

**81SG.**—(1) This Part applies only to —

- (a) book-entry securities; and

(b) designated securities, as if a reference to book-entry securities includes a reference to designated securities.

[36/2014]

(2) The application of this Part to designated securities under subsection (1)(b) is subject to such modifications as the Authority may prescribe by regulations, and different modifications may be prescribed for different classes of designated securities.

[36/2014]

(3) In this section, “designated securities” means such securities as may be accepted or designated by the Depository or its nominee for deposit, custody, clearing or book-entry settlement.

[36/2014]

### Central Depository System

**81SH.**—(1) The Central Depository System established by the repealed section 130C of the Companies Act 1967 on 12 November 1993 continues on or after 3 January 2016 as if it had been established under this section.

[36/2014]

(2) The following must be carried out using the computerised Central Depository System in accordance with the depository rules:

- (a) the deposit of documents evidencing title in respect of securities (with where applicable, in the case of shares or registered debentures, proper instruments of transfer duly executed) with the Depository and registration of such documents in the name of the Depository or its nominee;
- (b) maintenance of accounts by the Depository in the names of the depositors so as to reflect the title of the depositors to the book-entry securities;
- (c) effecting transfers of the book-entry securities electronically, and not by any other means, by the Depository and making an appropriate entry in the Depository Register of the book-entry securities that have been transferred.

[36/2014]

**Depository or nominee deemed to be bare trustee**

**81SI.**—(1) The Depository or its nominee is deemed to hold the book-entry securities deposited with it as a bare trustee for the collective benefit of depositors.

[36/2014]

(2) Subject to subsections (3) and (4), a depositor does not have any right to specific book-entry securities deposited with the Depository or its nominee but is entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts in the depositor's name.

[36/2014]

(3) A depository agent is deemed to hold book-entry securities deposited in its name with the Depository or its nominee, on behalf of any sub-account holder, as a bare trustee.

[36/2014]

(4) A sub-account holder does not have any right to specific book-entry securities deposited with the Depository or its nominee but is entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts maintained by the sub-account holder with a depository agent.

[36/2014]

**Depository not member of company and depositors deemed to be members**

**81SJ.**—(1) Despite anything in the Companies Act 1967 or any other written law or rule of law or in any instrument or in the constitution of a corporation, where book-entry securities of the corporation are deposited with the Depository or its nominee —

- (a) the Depository or its nominee (as the case may be) is deemed not to be a member of the corporation; and
- (b) the persons named as the depositors in a Depository Register are, for such period as the book-entry securities are entered against their names in the Depository Register, deemed to be —
  - (i) members of the corporation in respect of the amount of book-entry securities (relating to the stocks or

shares issued by the corporation) entered against their respective names in the Depository Register; or

- (ii) holders of the amount of the book-entry securities (relating to the debentures or any derivative instrument) entered against their respective names in the Depository Register.

[36/2014]

(2) Despite anything in the Companies Act 1967 or any other written law or rule of law or in any instrument or in the constitution of a corporation, where book-entry securities relating to units in any collective investment scheme (whether or not constituted as a corporation) are deposited with the Depository or its nominee —

- (a) the Depository or its nominee (as the case may be) is deemed not to be a holder of the book-entry securities; and
- (b) the persons named as the depositors in a Depository Register are, for such period as the book-entry securities are entered against their names in the Depository Register, deemed to be holders of the amount of the book-entry securities entered against their respective names in the Depository Register.

[36/2014]

(3) Nothing in this Part is to be construed as affecting —

- (a) the obligation of a public company to keep —
  - (i) a register of its members under section 190 of the Companies Act 1967 and allow inspection of the register under section 192 of the Companies Act 1967; and
  - (ii) a register of holders of debentures issued by the company under section 93 of the Companies Act 1967 and allow inspection of the register under that section,

except that the company is not obliged to enter in such registers the names and particulars of persons who are deemed members or holders of debentures under subsection (1)(b);

- (b) the right of a depositor to withdraw the depositor's documents evidencing title in respect of securities from the Depository at any time in accordance with the rules of the Depository and to register them in the depositor's or any other name; or
- (c) the enjoyment of any right, power or privilege conferred by, or the imposition of any liability, duty or obligation under the Companies Act 1967, any rule of law or under any instrument or under the constitution of a corporation upon a depositor, as a member of a corporation or as a holder of debentures or any derivative instruments except to the extent provided for in this Part or prescribed by regulations made thereunder.

[36/2014]

(4) Despite any provision in the Companies Act 1967, a depositor is not regarded as a member of a company entitled to attend any general meeting of the company and to speak and vote thereat unless the depositor's name appears on the Depository Register 72 hours before the general meeting.

[36/2014]

(5) The payment by a corporation to the Depository of any dividend payable to a depositor, to the extent of the payment made, discharges the corporation from any liability in respect of that payment.

[36/2014]

### **Depository to certify names of depositors to corporation upon request**

**81SK.** The Depository must certify the names of persons on the Depository Register to a corporation in accordance with the rules of the Depository upon a written request being made to it by the corporation.

[36/2014]

### **Maintenance of accounts**

**81SL.** The Depository must maintain accounts of book-entry securities on behalf of depositors in accordance with the rules of the Depository.

[36/2014]

**Transfers effected by Depository under book-entry clearing system**

**81SM.**—(1) Subject to this Part, a transfer of book-entry securities between depositors must be effected, despite anything in the Companies Act 1967 or any other written law or rule of law or in any instrument or in a corporation's constitution to the contrary, by the Depository making an appropriate entry in its Depository Register.

[36/2014]

(2) A transfer of securities by the Depository by way of book-entry to a depositor under this Part is valid and is not to be challenged in any court on the ground that the transfer is not accompanied by a proper instrument of transfer or that otherwise the transfer is not made in writing.

[36/2014; 40/2019]

**Depository to be discharged from liability if acting on instructions**

**81SN.**—(1) Subject to the regulations, the Depository, if acting in good faith and without negligence, shall not be liable for conversion or for any breach of trust or duty where the Depository has, in respect of book-entries in accounts maintained by it, made entries regarding the book-entry securities, or transferred or delivered the book-entry securities, according to the instructions of a depositor even though the depositor had no right to dispose of or take any other action in respect of the book-entry securities.

[36/2014]

(2) The Depository or a depository agent, if acting in good faith and without negligence, is fully discharged of its obligations to the account holder or sub-account holder by the transfer or delivery of book-entry securities upon the instructions of the account holder or sub-account holder, as the case may be.

[36/2014]

(3) The Depository, if acting in good faith and without negligence, is fully discharged of its obligations to a depository agent by the transfer or delivery of book-entry securities upon the instructions of the depository agent.

[36/2014]

(4) For the purposes of this section, the Depository or a depository agent is not to be treated as having been negligent by reason only of its failure to concern itself with whether or not the depositor or sub-account holder (as the case may be) has a right to dispose of or take any other action in respect of the book-entry securities or to issue the instructions.

[36/2014]

### **Confirmation of transaction**

**81SO.** The Depository must, in accordance with the depository rules, issue to each account holder and to each sub-account holder through the sub-account holder's depository agent, following upon any transaction affecting book-entry securities maintained for such account holder by the Depository and maintained for such sub-account holder by the sub-account holder's depository agent under this Part, a confirmation note which must specify the amount and description of the book-entry securities and any other relevant transaction information.

[36/2014]

### **No rectification of Depository Register**

**81SP.**—(1) Despite anything in the Companies Act 1967 or any written law or rule of law, no order may be made by the Court for rectification of the Depository Register; except that where the Court is satisfied that —

- (a) a depositor did not consent to a transfer of the book-entry securities; or
- (b) a depositor should not have been registered in the Depository Register as having title to the book-entry securities,

the Court may award damages to the firstmentioned depositor or to any person who would have been entitled to be registered in the Depository Register as having title to the book-entry securities (as the case may be) on such terms as the Court thinks to be equitable or make such other order as the Court thinks fit including an order for the transfer of book-entry securities to such depositor or person.

[36/2014]



(2) Where provisions exist in the constitution of a corporation that entitle a corporation to refuse registration of a transfer of book-entry securities, the corporation may in relation to any transfer to which it objects, notify the Depository in writing of its refusal before the transfer takes place and provide the Depository with the facts upon which such refusal is considered to be justified.

[36/2014]

(3) Where the Depository has had prior notice of the corporation's refusal under subsection (2) (but not otherwise), the Depository must refuse to effect the transfer and to enter the name of the transferee in the Depository Register and thereupon convey the facts upon which such refusal is considered to be justified to the transferee.

[36/2014]

(4) Section 130AB of the Companies Act 1967 does not apply to any refusal to register a transfer under subsections (2) and (3).

[36/2014]

### **Trustee, executor or administrator of deceased depositor named as depositor**

**81SQ.**—(1) Any trustee, executor or administrator of the estate of a deceased depositor whose name was entered in the Depository Register as owner or as having an interest in book-entry securities may open an account with the Depository and have his, her or its name entered in the Depository Register so as to reflect the interest of the trustee, executor or administrator in the book-entry securities.

[36/2014]

(2) Subject to this section, no notice of any trust expressed, implied or constructive may be entered in the Depository Register and no liabilities are affected by anything done pursuant to subsection (1) or pursuant to the law of any other place which corresponds to this section and the Depository and the issuer of the book-entry securities are not affected with notice of any trust by anything so done.

[36/2014]

### **Non-application of certain provisions in bankruptcy and company liquidation law**

**81SR.** Where by virtue of the provisions of any written law in relation to bankruptcy or company liquidation it is provided that —

- (a) any disposition of the property of a company after commencement of a winding up is void, unless the Court orders otherwise; or
- (b) any disposition of the property of a person who is adjudged bankrupt after the making of an application for a bankruptcy order and before vesting of the bankrupt's estate in a trustee is void unless done with the consent or ratification of the Court,

those provisions do not apply to any disposition of book-entry securities; but where a Court is satisfied that a party to the disposition, being a party other than the Depository, had notice that an application has been made for the winding up or bankruptcy of the other party to the disposition, it may award damages against that party on such terms as it thinks equitable or make such other order as the Court thinks fit, including an order for the transfer of book-entry securities by that party but not an order for the rectification of the Depository Register.

[36/2014]

### **Security interest**

**81SS.**—(1) Except as provided in this section or any other written law or any regulations made under section 81SU, no security interest may be created in book-entry securities.

[36/2014]

(2) A security interest in book-entry securities to secure the payment of a debt or liability may be created in favour of any depositor in the following manner:

- (a) by way of assignment, by an instrument of assignment in the prescribed form executed by the assignor;
- (b) by way of charge, by an instrument of charge in the prescribed form executed by the chargor,

if no security interest in any book-entry securities subsequent to any assignment or charge thereof may be created by the assignor or the chargor (as the case may be) in favour of any other person and any such assignment or charge is void.

[36/2014]

(3) Upon receipt of the instrument of assignment, the Depository must immediately, by way of an off-market transaction, transfer the book-entry securities to the assignee and thereafter notify the assignor and the assignee of the transfer in the prescribed manner.

[36/2014]

(4) Upon receipt of the instrument of charge, the Depository must immediately register the instrument in a register of charges maintained by the Depository and thereafter notify the chargor and the chargee in the prescribed manner.

[36/2014]

(5) The register of charges is not open to inspection to any person other than the chargor or the chargee or their authorised representatives and except for the purpose of the performance of its duties or the exercise of its functions or when required to do so by any court or under the provisions of any written law, the Depository must not disclose to any unauthorised person any information contained in the register of charges.

[36/2014]

(6) An assignment or a charge made in accordance with the provisions of this section, but not otherwise, has effect upon the Depository transferring the book-entry securities or endorsing the charge in the register of charges except that, where the instrument of assignment or charge specifies the number of book-entry securities to which the assignment or charge relates, the instrument of assignment or charge does not have any effect if on the date of receipt of such instrument, the number of book-entry securities in the account of the assignor or chargor is less than the number of book-entry securities specified in such instrument.

[36/2014; 4/2017]

(7) The provisions of section 81SJ(1), (2) and (3) apply to an assignment of book-entry securities made under this section.

[36/2014]

(8) An assignee or a registered chargee of book-entry securities has the following powers:

- (a) a power, when the loan or liability has become due and payable, to sell the book-entry securities or any part thereof and in the case of a chargee, the chargee has the power to

sell the book-entry securities or any part thereof in the name of and for and on behalf of the chargor;

- (b) any other power which may be granted to the assignee or registered chargee in writing by the assignor or chargor in relation to the book-entry securities provided that the Depository is not concerned with or affected by the exercise of any such power.

[36/2014]

(9) Nothing in subsection (8) is to be construed as imposing on the Depository a duty to ascertain whether the power of sale has become exercisable or has been lawfully exercised by the assignee or chargee.

[36/2014]

(10) No book-entry securities assigned by way of security or charged in accordance with the provisions of this section may be —

- (a) transferred by way of an off-market transaction to the assignor except upon the production of a duly executed re-assignment in the prescribed form; or
- (b) transferred by the chargor, by way of sale or otherwise, except —
  - (i) upon the production of a duly executed discharge of charge in the prescribed form; or
  - (ii) upon the return of such book-entry securities to the chargor's control with the approval in writing of the chargee.

[36/2014; 4/2017]

(10A) A charge on book-entry securities made in accordance with the provisions of this section is treated as discharged if such book-entry securities have been returned to the chargor's control with the approval in writing of the chargee.

[4/2017]

(11) Upon the sale by the assignee or the chargee in exercise of the assignee's or chargee's power of sale of any book-entry securities assigned or charged in accordance with the provisions of this section, the assignee or the chargee must immediately notify the Depository of the sale and the particulars of the book-entry securities sold by the assignee or chargee, and the Depository must —

- (a) in the case of the sale by the assignee, notify the assignor of the sale; and
- (b) in the case of the sale by the chargee, effect a transfer of the book-entry securities to the buyer in accordance with section 81SM and notify the chargor of the transfer,

and the provisions of sections 81SO, 81SP and 81SR apply, with the necessary modifications, to a transfer effected pursuant to this section.

*[36/2014]*

(12) Upon fulfilling the assignor's or the chargor's obligations under an assignment by way of security or a charge, the assignor or the chargor is entitled to obtain from the assignee or chargee a re-assignment or a discharge of charge (as the case may be) of the whole or part of the book-entry securities.

*[36/2014]*

(13) A re-assignment or discharge of charge is to be effected by the Depository by transferring the book-entry securities to the assignor or cancelling the endorsement of charge in the register of charges and in the chargor's account, as the case may be.

*[36/2014]*

(14) Book-entry securities may be assigned by way of security by an assignee or charged in the prescribed form by a chargee to secure the payment of any debt or liability of the assignee or the chargee (as the case may be) in accordance with the provisions of this section provided that no book-entry security may be charged by a chargee subsequent to any sub-charge.

*[36/2014]*

(15) All acts, powers and rights which might previously have been done or exercised by the chargee thereunder in relation to the book-entry securities may thereafter be done or exercised by the sub-chargee, and, except with the consent of the sub-chargee, must not be done or exercised by the chargee thereunder during the currency of the sub-charge.

*[36/2014]*

(16) Upon the sale by the sub-chargee in exercise of the sub-chargee's power of sale of any book-entry securities in accordance with the provisions of this section, the provisions of

subsection (11), in respect of a sale by a chargee, apply with the necessary modifications to the sale by the sub-chargee.

[36/2014]

(17) Nothing in subsection (14) affects the rights or liabilities of the original assignor or chargor of the book-entry securities under subsections (12) and (13) and the original assignor or chargor is entitled to a re-assignment or discharge of charge from the assignee or chargee free from all subsequent security interests created without the original assignor's or chargor's consent upon satisfying the original assignor's or chargor's indebtedness or liability to the assignee or the chargee.

[36/2014]

(18) The provisions of section 81SN apply to relieve the Depository and its servants or agents of any liability in respect of any act done or omission made under this section as if references to depositor include references to assignee, chargee or sub-chargee, as the case may be.

[36/2014]

(19) Nothing in this section affects the validity and operation of floating charges on book-entry securities created under the common law before or after 12 November 1993, but the Depository is not required to recognise, even when having notice thereof, any equitable interest in any book-entry securities under a floating charge except the power of the chargee, upon the crystallisation of the floating charge, to sell the book-entry securities in the name of the chargor in accordance with the provisions of this section.

[36/2014]

(20) Nothing in subsection (19) is to be construed as imposing on the Depository a duty to ascertain whether the power of sale pursuant to a floating charge has become exercisable or has been lawfully exercised.

[36/2014]

(21) A member of SGX-ST has a lien over the unpaid book-entry securities purchased for the account of its customer which is enforceable by sale in accordance with and subject to the provisions of this section as if the same had been charged to the member under this section, except that the member is not obliged to

notify the Depository of the sale or the particulars of the book-entry securities sold by the member.

[36/2014]

(22) Any security interest on book-entry securities created before 12 November 1993 and subsisting or in force on that date continues to have effect as if the Companies (Amendment) Act 1993 had not been enacted.

[36/2014]

(23) In this section, “off-market transaction” means a transaction effected outside the SGX-ST.

[36/2014]

### **Depository rules to be regarded as rules of approved exchange that are subject to this Act**

**81ST.**—(1) Depository rules in relation to the operation of the Central Depository System, including any amendments made thereto, are regarded as having the same force and effect as if made by an approved exchange and are likewise subject to the provisions of this Act.

[36/2014; 4/2017]

(2) Without limiting subsection (1), sections 23 and 25 apply to the depository rules under subsection (1) as they apply to rules made by an approved exchange.

[36/2014; 4/2017]

### **Power of Authority to make regulations**

**81SU.**—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to —

- (a) rights and obligations of persons in relation to securities dealt with under the Central Depository System;
- (b) procedures for the deposit and custody of securities and the transfer of title to book-entry securities and the regulation of persons concerned in that operation;
- (c) matters relating to security interest in book-entry securities;

- (d) keeping of depositors' accounts by the Depository and sub-accounts by the depository agents;
  - (e) keeping of the Depository Register and of records generally;
  - (f) safeguards for depositors including the maintenance of insurance and the establishment and maintenance of compensation funds by the Depository for the purpose of settling claims by depositors;
  - (g) matters relating to linkages between the Depository and other securities depositories (by whatever name called) established and maintained outside Singapore;
  - (h) any requirement for fees charged by the Depository to be approved by the Authority;
  - (i) the modification or exclusion of any provision of any written law, rule of law, any instrument or constitution;
  - (j) the application, with such modifications as may be required, of the provisions of any written law, instrument or constitution; and
  - (k) such supplementary, incidental, saving or transitional provisions as may be necessary or expedient.
- [36/2014]*
- (2) Regulations made under this section may provide —
- (a) that the Authority may require the Depository to provide it with such information or documents as the Authority considers necessary for such approval; and
  - (b) that any contravention of any specified provision in the regulations shall be an offence punishable with a fine not exceeding \$150,000 and, in the case of a continuing offence, with a further fine not exceeding 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

*[36/2014]*



**Power of Authority to issue written directions**

**81SV.**—(1) The Authority may, if it thinks it necessary or expedient in the public interest or for the protection of investors, issue written directions, either of a general or specific nature, to the Depository or the depository agent, to comply with such requirements as the Authority may specify in the written direction.

[36/2014]

(2) Without limiting subsection (1), any written direction may be issued with respect to the discharge of the duties or functions of the Depository or depository agent.

[36/2014]

(3) The Depository and the depository agent must comply with any direction made under subsection (1).

[36/2014]

(4) Before giving directions under subsection (1), the Authority may consult the Depository or the depository agent and afford it an opportunity to make representations.

[36/2014]

(5) It is not necessary to publish any direction given under subsection (1) in the *Gazette*.

[36/2014]

**PART 3A****APPROVED HOLDING COMPANIES****Objectives of this Part**

**81T.** The objectives of this Part are —

- (a) to provide a regulatory framework for the establishment and operation of holding companies of —
  - (i) approved exchanges;
  - (ia) licensed trade repositories;
  - (ii) approved clearing houses; and

- (iii) corporations that are approved holding companies, and to ensure that such holding companies are fit and proper to perform their functions; and
- (b) to reduce systemic risk.

[34/2012]

*Division 1 — Establishment of Approved Holding Companies*

**Requirement for approval**

**81U.**—(1) No corporation may be the holding company of any approved exchange, licensed trade repository, approved clearing house or corporation which is an approved holding company, unless the firstmentioned corporation is an approved holding company.

[34/2012]

(2) Any corporation which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(3) Without affecting section 337(1), the Authority may, by regulations made under section 81ZK, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(4) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 81T.

[34/2012]

(5) It is not necessary to publish any exemption granted under subsection (4) in the *Gazette*.

[34/2012]

- (6) The Authority may, at any time, by written notice —
- (a) add to the conditions and restrictions referred to in subsection (4); or
  - (b) vary or revoke any condition or restriction referred to in that subsection.

[34/2012]

(7) Every corporation that is granted an exemption under subsection (3) must satisfy every condition or restriction imposed on it under that subsection.

[34/2012]

(8) Every corporation that is granted an exemption under subsection (4) must satisfy every condition or restriction imposed on it under that subsection or subsection (6).

[34/2012]

(9) Any corporation which contravenes subsection (7) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Application for approval**

**81V.**—(1) A corporation may apply to the Authority to be approved as an approved holding company.

- (2) An application made under subsection (1) must be —
- (a) made in such form and manner as the Authority may prescribe; and
  - (b) accompanied by a non-refundable prescribed application fee, which must be paid in the manner specified by the Authority.

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

**Power of Authority to approve holding companies**

**81W.**—(1) Where an application is made under section 81V(1), the Authority may approve the corporation as an approved holding company subject to such conditions or restrictions as the Authority thinks fit to impose by written notice, if the Authority is satisfied that —

- (a) it would not be contrary to the interests of the public or contrary to the objectives specified in section 81T to approve the corporation; and
- (b) the grounds referred to in subsection (5) for refusing such approval do not apply.

(2) The Authority may, at any time, by written notice to the corporation, vary any condition or restriction or impose such further conditions or restrictions as the Authority thinks fit.

(3) An approved holding company must, for the duration of the approval, satisfy all conditions and restrictions that may be imposed on it under subsections (1) and (2).

(4) Subject to subsection (5), the Authority must not refuse to approve a corporation under subsection (1) without giving the corporation an opportunity to be heard.

(5) The Authority may refuse to approve a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

(6) The Authority must give notice in the *Gazette* of any corporation approved under subsection (1).

(7) Any applicant that is aggrieved by the refusal of the Authority to grant an approval under subsection (1) may, within 30 days after the applicant is notified of the decision, appeal to the Minister whose decision is final.

(8) Any corporation which contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

### **Annual fees payable by approved holding company**

**81X.**—(1) Every approved holding company must pay to the Authority such annual fees as may be prescribed and in such manner as the Authority may specify.

(2) The Authority may, where it considers appropriate, refund or remit the whole or part of any annual fee paid or payable to it.

### **Cancellation of approval**

**81Y.**—(1) An approved holding company which intends to cease its activities as an approved holding company may apply to the Authority to cancel its approval.

(2) The Authority may cancel the approval if it is satisfied that the approved holding company referred to in subsection (1) has ceased its activities as an approved holding company.

### **Power of Authority to revoke approval**

**81Z.**—(1) The Authority may revoke any approval of a corporation as an approved holding company under section 81W(1) if —

- (a) the corporation ceases to be the holding company of any approved exchange, licensed trade repository, approved clearing house or corporation which is an approved holding company;
- (b) the corporation is being wound up or otherwise dissolved, whether in Singapore or elsewhere;

- (c) the corporation contravenes —
  - (i) any condition or restriction applicable in respect of its approval;
  - (ii) any direction issued to it by the Authority under this Act; or
  - (iii) any provision in this Act;
- (d) the corporation operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public;
- (da) upon the Authority exercising any power under section 81ZGC(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval;
- (e) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;
- (f) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly; or
- (g) any information or document provided by the corporation to the Authority is false or misleading.

[34/2012; 10/2013; 31/2017]

(2) Subject to subsection (3), the Authority must not revoke under subsection (1) any approval under section 81W(1) that was granted to a corporation without giving the corporation an opportunity to be heard.

(3) The Authority may revoke an approval under section 81W(1) that was granted to a corporation on any of the following circumstances without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

(4) Any corporation which is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision is final.

(5) Despite the lodging of an appeal under subsection (4), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

(6) The Minister may, when deciding an appeal under subsection (4), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect from the date of the Minister's decision.

(7) The Authority must give notice in the *Gazette* of any revocation of approval referred to in subsection (1).

### *Division 2 — Regulation of Approved Holding Companies*

#### **Obligation to notify Authority of certain matters**

**81ZA.**—(1) An approved holding company must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) any material change to the information provided by the approved holding company in its application under section 81V(1);
- (b) the carrying on of any activity by the approved holding company other than such activity or such class of activities prescribed by regulations made under section 81ZK;

- (c) the acquisition by the approved holding company of a substantial shareholding in a corporation, which carries on any activity other than such activity or such class of activities prescribed by regulations made under section 81ZK;
- (d) any other matter that the Authority may prescribe by regulations made under section 81ZK for the purposes of this paragraph or specify by written notice to the approved holding company.

[34/2012; 4/2017]

(2) Without limiting section 81ZL(1), the Authority may, at any time after receiving a notification referred to in subsection (1), issue directions to the approved holding company —

- (a) where the notification relates to a matter referred to in subsection (1)(b) —
  - (i) to cease carrying on the firstmentioned activity referred to in subsection (1)(b); or
  - (ii) to carry on the firstmentioned activity referred to in subsection (1)(b) subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81ZL(1); or
- (b) where the notification relates to a matter referred to in subsection (1)(c) —
  - (i) to dispose of the shareholding referred to in subsection (1)(c); or
  - (ii) to exercise its rights relating to such shareholding subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81ZL(1),

and the approved holding company must comply with such directions.



(3) Any approved holding company which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

### **Obligation to submit periodic reports**

**81ZB.**—(1) An approved holding company must submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

(2) Any approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

### **Obligation to assist Authority**

**81ZC.**—(1) An approved holding company must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of —

- (a) such books and other information relating to the activities of the approved holding company; and
- (b) such other information,

as the Authority may require for the proper administration of this Act.

(2) Any approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

**Obligation to maintain confidentiality**

**81ZD.**—(1) Subject to subsection (2), an approved holding company and its officers and employees must maintain, and aid in maintaining, the confidentiality of all user information that —

- (a) comes to the knowledge of the approved holding company or any of its officers or employees; or
- (b) is in the possession of the approved holding company or any of its officers or employees.

(2) Subsection (1) does not apply to —

- (a) the disclosure of user information for such purposes, or in such circumstances, as the Authority may prescribe;
- (b) any disclosure of user information which is authorised by the Authority to be disclosed or provided; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

(4) To avoid doubt, nothing in this section is to be construed as preventing an approved holding company from entering into a written agreement with a user which obliges the approved holding company to maintain a higher degree of confidentiality than that specified in this section.

**Control of substantial shareholding in approved holding companies**

**81ZE.**—(1) A person must not enter into any agreement to acquire shares in an approved holding company by virtue of which the person would, if the agreement had been carried out, become a substantial shareholder of the approved holding company without first obtaining the approval of the Authority to enter into the agreement.

(2) A person must not become —

- (a) a 12% controller; or
- (b) a 20% controller,

of an approved holding company without first obtaining the approval of the Authority.

(3) In subsection (2) —

“12% controller” means a person, not being a 20% controller, who alone or together with the person’s associates —

- (a) holds not less than 12% of the shares in the approved holding company; or
- (b) is in a position to control not less than 12% of the votes in the approved holding company;

“20% controller” means a person who, alone or together with the person’s associates —

- (a) holds not less than 20% of the shares in the approved holding company; or
- (b) is in a position to control not less than 20% of the votes in the approved holding company.

(4) In this section —

(a) a person holds a share if —

- (i) the person is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act 1967; or
- (ii) the person otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7(6) to (10) of the Companies Act 1967;

(b) a reference to the control of a percentage of the votes in an approved holding company is to be construed as a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be

cast in a general meeting of the approved holding company; and

- (c) a person, *A*, is an associate of another person, *B*, if —
- (i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister of *B*;
  - (ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;
  - (iii) [*Deleted by Act 35 of 2014*]
  - (iv) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;
  - (v) *A* is a subsidiary of *B*;
  - (vi) [*Deleted by Act 35 of 2014*]
  - (vii) *A* is a body corporate in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii), (iv) and (v), is in a position to control not less than 20% of the votes in *A*; or
  - (viii) [*Deleted by Act 35 of 2014*]
  - (ix) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the approved holding company.

[35/2014]

(5) The Authority may grant its approval referred to in subsection (1) or (2) subject to such conditions or restrictions as the Authority thinks fit.

(6) Without affecting subsection (11), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by written notice, direct the transfer or disposal of all or any of the shares of an approved holding company in which a substantial shareholder, 12% controller or 20% controller of the approved holding company has an interest.

(7) Until a person to whom a direction has been issued under subsection (6) transfers or disposes of the shares which are the subject of the direction, and despite anything to the contrary in the Companies Act 1967 or the memorandum or articles of association or other constituent document or documents of the approved holding company —

- (a) no voting rights are exercisable in respect of the shares which are the subject of the direction;
- (b) the approved holding company must not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and
- (c) except in a liquidation of the approved holding company, the approved holding company must not make any payment (whether by way of cash dividend, dividend in kind or otherwise) in respect of the shares which are the subject of the direction.

(8) Any issue of shares by an approved holding company in contravention of subsection (7)(b) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return those shares to the approved holding company, upon which the approved holding company must return to the person any payment received from the person in respect of those shares.

(9) Any payment made by an approved holding company in contravention of subsection (7)(c) is deemed to be void, and a person to whom a direction has been issued under subsection (6) must immediately return the payment the person has received to the approved holding company.

(10) The Authority may exempt —

(a) any person or class or persons; or

(b) any class or description of shares or interests in shares,

from the requirement under subsection (1) or (2), subject to such conditions or restrictions as the Authority may impose.

(11) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

(12) Any person who contravenes subsection (7)(b) or (c), (8) or (9) or any direction issued by the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

### **Approval of chairperson, chief executive officer, director and key persons**

**81ZF.**—(1) An approved holding company must ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

(2) An approved holding company must not appoint a person as its chairperson, chief executive officer or director unless the approved holding company has obtained the approval of the Authority.

(3) The Authority may, by written notice, require an approved holding company to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the approved holding company and the approved holding company must comply with the notice.

(4) An application for approval under subsection (2) or (3) must be made in such form and manner as the Authority may prescribe.

(5) Without limiting section 81ZK and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (2) or (3), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

(6) Subject to subsection (7), the Authority must not refuse an application for approval under this section without giving the approved holding company an opportunity to be heard.

(7) The Authority may refuse an application for approval on any of the following grounds without giving the approved holding company an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

(8) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(9) An approved holding company must, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairperson, chief executive officer, director or person referred to in the notice issued by the Authority under subsection (3).

(10) The Authority may make regulations under section 81ZK relating to the composition and duties of the board of directors or any committee of an approved holding company.

*[34/2012]*

(11) In this section, “committee” includes any committee of directors, disciplinary committee, appeals committee or any body responsible for disciplinary action against a member of an approved

exchange or approved clearing house, or a participant of a licensed trade repository, of which an approved holding company is the holding company.

[34/2012]

(12) The Authority may exempt an approved holding company or a class of approved holding companies from the requirement under subsection (1), (2) or (9), subject to such conditions or restrictions as the Authority may impose.

(13) Any approved holding company which contravenes subsection (1), (2), (3) or (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

### **Listing of approved holding companies on organised market**

**81ZG.**—(1) The securities or securities-based derivatives contracts of an approved holding company must not be listed for quotation on an organised market that is operated by any of its related corporations, unless the approved holding company and the operator of the organised market have entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from such listing; and
- (b) for the purpose of ensuring the integrity of the trading of the securities or securities-based derivatives contracts (as the case may be) of the approved holding company.

[4/2017]

(2) Where the securities or securities-based derivatives contracts of an approved holding company are listed for quotation on an organised market operated by any of its related corporations, the Authority may act in place of the operator of the organised market in making decisions and taking action, or require the operator of the organised market to make decisions and to take action on behalf of the Authority, on —



- (a) the admission of the approved holding company to, or the removal of the approved holding company from, the official list of the organised market; and
- (b) the granting of approval for the securities or securities-based derivatives contracts (as the case may be) of the approved holding company to be, or the stopping or suspending of the securities or securities-based derivatives contracts (as the case may be) of the approved holding company from being, listed for quotation or quoted on the organised market.

[4/2017]

(3) The Authority may, by written notice to the operator of the organised market —

- (a) modify the listing rules of the organised market for the purpose of their application to the listing of the securities or securities-based derivatives contracts of the approved holding company for quotation or trading; or
- (b) waive the application of any listing rule of the organised market to the approved holding company.

[4/2017]

(4) Any approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

### **Information of insolvency, etc.**

**81ZGA.**—(1) Any approved holding company which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, must immediately inform the Authority of that fact.

[10/2013]

(2) Any approved holding company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a

continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Interpretation of sections 81ZGB to 81ZGG**

**81ZGB.** In this section and sections 81ZGC to 81ZGG, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to an approved holding company, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved holding company, or acting in an equivalent capacity in relation to the approved holding company;

“relevant business” means any business of an approved holding company —

(a) which the Authority has assumed control of under section 81ZGC; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 81ZGC;

“statutory adviser” means a statutory adviser appointed under section 81ZGC;

“statutory manager” means a statutory manager appointed under section 81ZGC.

[10/2013]

### **Action by Authority if approved holding company unable to meet obligations, etc.**

**81ZGC.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(a) an approved holding company informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

- (b) an approved holding company becomes unable to meet its obligations, or is insolvent, or suspends payments;
  - (c) the Authority is of the opinion that an approved holding company —
    - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 81T;
    - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
    - (iii) has contravened any of the provisions of this Act; or
    - (iv) has failed to comply with any condition or restriction imposed on it under section 81W(1) or (2); or
  - (d) the Authority considers it in the public interest to do so.  
*[10/2013]*
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the approved holding company immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
  - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved holding company on the proper management of such of the business of the approved holding company as the Authority may determine; or
  - (c) assume control of and manage such of the business of the approved holding company as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.  
*[10/2013]*
- (3) In the case of an approved holding company incorporated outside Singapore, any appointment of a statutory adviser or statutory

manager or any assumption of control by the Authority of any business of the approved holding company under subsection (2) is only in relation to —

- (a) the business or affairs of the approved holding company carried on in, or managed in or from, Singapore; or
- (b) the property of the approved holding company located in Singapore, or reflected in the books of the approved holding company in Singapore (as the case may be) in relation to its operations in Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved holding company, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) must be discharged or exercised by such persons jointly; and
- (c) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 81Z(1)(da), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or

omitted to be done with reasonable care and in good faith in the course of or in connection with —

- (a) the exercise or purported exercise of any power under this Act;
- (b) the performance or purported performance of any function or duty under this Act; or
- (c) the compliance or purported compliance with this Act.

[10/2013]

(7) Any approved holding company that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Effect of assumption of control under section 81ZGC**

**81ZGD.**—(1) Upon assuming control of the relevant business of an approved holding company, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company, the Authority or statutory manager —

- (a) must manage the relevant business of the approved holding company in the name of and on behalf of the approved holding company; and
- (b) is deemed to be an agent of the approved holding company.

[10/2013]

(3) In managing the relevant business of an approved holding company, the Authority or statutory manager —

- (a) must take into consideration the interests of the public or the section of the public referred to in section 81ZGC(1)(c)(i), and the need to protect investors; and

- (b) has all the duties, powers and functions of the members of the board of directors of the approved holding company (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the approved holding company, including powers of delegation, in relation to the relevant business of the approved holding company; but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved holding company under the Companies Act 1967 or the constitution of the approved holding company.

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of an approved holding company by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved holding company, which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the approved holding company, for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved holding company, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the approved holding company.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved holding company, the Authority may at any time, by written notice to the person and the approved holding company, revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved holding company is revoked under subsection (4) or (6),

acts or purports to act after the revocation as the chief executive officer or a director of the approved holding company during the period when the Authority or statutory manager is in control of the relevant business of the approved holding company —

- (a) the act or purported act of the person is invalid and of no effect; and
- (b) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved holding company in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved holding company during the period when the Authority or statutory manager is in control of the relevant business of the approved holding company —

- (a) the act or purported act of the person is invalid and of no effect; and
- (b) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company —

- (a) if there is any conflict or inconsistency between —
  - (i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and
  - (ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved holding company,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

- (b) no person may exercise any voting or other right attached to any share in the approved holding company in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Duration of control**

**81ZGE.**—(1) The Authority must cease to be in control of the relevant business of an approved holding company when the Authority is satisfied that —

- (a) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 81ZGC(1)(c)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of an approved holding company on the date of the statutory manager's appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of an approved holding company may be revoked by the Authority at any time —

- (a) if the Authority is satisfied that —
- (i) the reasons for the appointment have ceased to exist; or
- (ii) it is no longer necessary in the interests of the public or the section of the public referred to in



section 81ZGC(1)(c)(i) or for the protection of investors; or

(b) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the approved holding company.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

- (a) the Authority's assumption of control of the relevant business of an approved holding company;
- (b) the cessation of the Authority's control of the relevant business of an approved holding company;
- (c) the appointment of a statutory manager in relation to the relevant business of an approved holding company; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of an approved holding company.

[10/2013]

### **Responsibilities of officers, member, etc., of approved holding company**

**81ZGF.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company —

- (a) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved holding company to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved holding company which is comprised in, forms

part of or relates to the relevant business of the approved holding company, and which is in the person's possession or control; and

- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved holding company must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved holding company, within such time and in such manner as the Authority or statutory manager may specify.

*[10/2013; 40/2019]*

(2) Any person who —

- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
- (b) in purported compliance with subsection (1)(b), knowingly or recklessly provides any information or document that 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 \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

*[10/2013]*

### **Remuneration and expenses of Authority and others in certain cases**

**81ZGG.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved holding company —

- (a) to a statutory manager or statutory adviser appointed in relation to the approved holding company, whether or not the appointment has been revoked; and

- (b) where the Authority has assumed control of the relevant business of the approved holding company, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The approved holding company must reimburse the Authority any remuneration and expenses payable by the approved holding company to a statutory manager or statutory adviser.

[10/2013]

### **Additional powers of Authority in respect of auditors**

**81ZH.**—(1) If an auditor of an approved holding company, in the course of the performance of his or her duties, becomes aware of —

- (a) any matter which, in his or her opinion, adversely affects or may adversely affect the financial position of the approved holding company to a material extent;
- (b) any matter which, in his or her opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts of the approved holding company, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors,

the auditor must immediately send to the Authority a written report of the matter or the irregularity.

(2) An auditor shall not, in the absence of malice on his or her part, be liable to any action for defamation at the suit of any person in respect of any statement made in the auditor's report under subsection (1).

(3) Subsection (2) 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.

(4) The Authority may impose all or any of the following duties on an auditor of an approved holding company:

- (a) a duty to submit such additional information and reports in relation to his or her audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his or her audit of the business and affairs of the approved holding company;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his or her audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor must carry out such duties.

(5) The approved holding company must remunerate the auditor in respect of the discharge by him or her of all or any of the duties referred to in subsection (4).

### **Power of Authority to exempt approved holding company from provisions of this Part**

**81ZI.**—(1) Without affecting section 337(1), the Authority may, by regulations made under section 81ZK, exempt any approved holding company or class of approved holding companies from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any approved holding company from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by written notice, if the Authority is satisfied that the non-compliance by that approved holding company with that provision will not detract from the objectives specified in section 81T.

[34/2012; 4/2017]

(2A) The Authority may, at any time, by written notice, add to, vary or revoke the conditions or restrictions mentioned in subsection (2).

[4/2017]

(2B) An approved holding company, or any class of approved holding companies, that is exempted under subsection (1) must satisfy every condition or restriction imposed on it under that subsection.

[4/2017]

(2C) An approved holding company, or any class of approved holding companies, that is exempted under subsection (2) must, for the duration of the exemption, satisfy every condition or restriction imposed on it under that subsection and subsection (2A).

[4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

### **Power of Authority to remove officers**

**81ZJ.**—(1) Where the Authority is satisfied that an officer of an approved holding company —

- (a) has wilfully contravened or wilfully caused that approved holding company to contravene this Act;
- (b) has, without reasonable excuse, failed to ensure compliance with this Act by that approved holding company;
- (c) has failed to discharge the duties or functions of his or her office or employment;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him or her in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction

for which involved a finding that he or she acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice direct that approved holding company to remove the officer from his or her office or employment and that approved holding company must comply with such notice, despite section 152 of the Companies Act 1967.

(2) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved holding company has failed to discharge the duties or functions of his or her office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe or specify in directions issued by written notice.

(3) Subject to subsection (4), the Authority must not direct an approved holding company to remove an officer from his or her office or employment without giving the approved holding company an opportunity to be heard.

(4) The Authority may direct an approved holding company to remove an officer from his or her office or employment under subsection (1) on any of the following grounds without giving the approved holding company an opportunity to be heard:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority directs an approved holding company to remove an officer from his or her office or employment under

subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) Any approved holding company that is aggrieved by a direction of the Authority made in relation to the approved holding company under subsection (1) may, within 30 days after the approved holding company is notified of the direction, appeal to the Minister whose decision is final.

(7) Despite the lodging of an appeal under subsection (6), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect from the date of the Minister's decision.

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by an approved holding company in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(10) Any approved holding company which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

### **Power of Authority to make regulations**

**81ZK.**—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to the approval of, and the requirements applicable to, persons who establish, operate, or assist in establishing or operating approved holding companies.

[34/2012]

- (2) Regulations made under this section may provide —
- (a) that a contravention of any specified provision thereof shall be an offence; and
  - (b) for penalties not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

### **Power of Authority to issue directions**

**81ZL.**—(1) The Authority may, if it thinks it necessary or expedient —

- (a) for ensuring fair, orderly and transparent markets;
- (aa) for ensuring safe and efficient trade repositories;
- (b) for ensuring safe and efficient clearing facilities;
- (c) for ensuring the integrity and stability of the capital markets or the financial system;
- (d) in the interests of the public or a section of the public or for the protection of investors;
- (e) for the effective administration of this Act; or
- (f) for ensuring compliance with any condition or restriction as the Authority may impose under section 81W(1) or (2), 81ZA(2), 81ZE(5) or (10), 81ZF(12) or 81ZI, or such other obligations or requirements under this Act or as the Authority may prescribe,

issue directions by written notice either of a general or specific nature to an approved holding company, and the approved holding company must comply with such directions.

[34/2012]

(2) Any approved holding company which, without reasonable excuse, contravenes a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not



exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

(3) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

*Division 3 — Voluntary Transfer of Business of  
Approved Holding Company*

**Interpretation of this Division**

**81ZM.** In this Division, unless the context otherwise requires —

“business” includes affairs, property, right, obligation and liability;

“Court” means the General Division of the High Court;

“debenture” has the meaning given by section 4(1) of the Companies Act 1967;

“property” includes property, right and power of every description;

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means an approved holding company, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved holding company, to which the whole or any part of a transferor’s business is, is to be, or is proposed to be transferred under this Division;

“transferor” means an approved holding company the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[10/2013; 40/2019]

**Voluntary transfer of business**

**81ZN.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved holding company) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved holding company; and
- (c) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of an approved holding company to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(a) if the Authority is satisfied that —

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the

discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

- (a) without reasonable excuse, fails to comply with any requirement under subsection (7); or
- (b) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that 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 \$200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

### **Approval of transfer**

**81ZO.**—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

(2) Before making an application under subsection (1) —

- (a) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;
- (b) the transferor must obtain the consent of the Authority under section 81ZN(1)(a);

- (c) the transferor and the transferee must, if they intend to serve on their respective shareholders a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
- (e) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
- (f) unless the Court directs otherwise, the transferor and the transferee must serve on their respective shareholders affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

- (a) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
- (b) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 81ZN(1)(a) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
- (b) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not approved as an approved holding company by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being approved as an approved holding company by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) the provisions to be made for persons who are affected by the transfer;
- (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to any property which is held by the transferor as trustee; and

- (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

## PART 4

### HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVES

#### *Division 1 — Capital Markets Services Licence*

[2/2009]

#### **Need for capital markets services licence**

**82.**—(1) Subject to subsection (2) and section 99, no person may, whether as principal or agent, carry on business in any regulated activity or hold out that the person is carrying on such business unless the person is the holder of a capital markets services licence for that regulated activity.

(2) Subsection (1) does not apply to any person specified in the Third Schedule.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

**83.** [Repealed by Act 2 of 2009]

**Application for grant of capital markets services licence**

**84.**—(1) An application for the grant of a capital markets services licence must be made to the Authority in such form and manner as the Authority may specify.

[2/2009; 4/2017]

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

(3) An application for the grant of a capital markets services licence must be accompanied by a non-refundable prescribed application fee which must be paid in the manner specified by the Authority.

[2/2009]

**Licence fee**

**85.**—(1) The holder of a capital markets services licence must on a yearly basis on such date as the Authority may specify pay such licence fee for each regulated activity to which the licence relates as the Authority may prescribe.

[2/2009]

(2) Any licence fee paid to the Authority in respect of any regulated activity must not be refunded if —

- (a) the licence is revoked or suspended, or lapses during the period to which the licence fee relates;
- (b) *[Deleted by Act 2 of 2009]*
- (c) the holder of a capital markets services licence ceases to carry on business in that regulated activity during the period to which the licence fee relates; or
- (d) a prohibition order has been made against the holder of a capital markets services licence under section 101A.

[2/2009]

(3) Subject to subsection (2), the Authority may, where it considers appropriate, refund the whole or part of any licence fee paid to it.

(4) Where the holder of a capital markets services licence fails to pay the licence fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day



or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[2/2009]

### **Grant of capital markets services licence**

**86.**—(1) A corporation may make an application for a capital markets services licence to carry on business in one or more regulated activities.

(2) In granting a capital markets services licence, the Authority must specify the regulated activity or activities to which the licence relates, described in such manner as the Authority considers appropriate.

(3) A capital markets services licence may only be granted if the applicant meets such minimum financial and other requirements as the Authority may prescribe, either generally or specifically, or as are provided in the business rules of an approved exchange or recognised market operator.

[4/2017]

(4) Subject to regulations made under this Act, where an application is made for the grant of a capital markets services licence, the Authority may refuse the application if —

- (a) the applicant has not provided the Authority with such information or documents 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 manner of conducting business, as the Authority may require;
- (aa) any information or document that is provided by the applicant to the Authority is false or misleading;
- (b) the applicant or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (c) execution against the applicant or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;

- (d) a receiver, a receiver and manager, judicial manager or an equivalent person has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the applicant or its substantial shareholder;
- (e) 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;
- (f) the applicant or its substantial shareholder, or any officer of the applicant —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he or she had acted fraudulently or dishonestly; or
  - (ii) has been convicted of an offence under this Act;
- (g) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they are to perform in connection with the holding of the licence;
- (h) the applicant fails to satisfy the Authority that it is a fit and proper person to be licensed or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (i) the Authority has reason to believe that the applicant may not be able to act in the best interests of its subscribers or customers having regard to the reputation, character, financial integrity and reliability of the applicant or its officers, employees or substantial shareholders;
- (j) the Authority is not satisfied as to the financial standing of the applicant or its substantial shareholders or the manner in which the applicant's business is to be conducted;

- (k) 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;
- (l) there are other circumstances which are likely to —
  - (i) lead to the improper conduct of business by the applicant, any of its officers, employees or substantial shareholders; or
  - (ii) reflect discredit on the manner of conducting the business of the applicant or its substantial shareholders;
- (m) the Authority has reason to believe that the applicant, or any of its officers or employees, will not perform the functions for which the applicant seeks to be licensed, efficiently, honestly or fairly;
- (n) the Authority is of the opinion that it would be contrary to the interests of the public to grant the licence; or
- (o) a prohibition order under section 101A has been made by the Authority, and remains in force, against the applicant.

[2/2009]

(5) Subject to subsection (6), the Authority must not refuse an application for a grant of a capital markets services licence without giving the applicant an opportunity to be heard.

[2/2009]

(6) The Authority may refuse an application for the grant of a capital markets services licence on any of the following grounds without giving the applicant an opportunity to be heard:

- (a) the applicant is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the applicant;
- (c) the applicant has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or

the conviction for which involved a finding that it had acted fraudulently or dishonestly;

- (d) a prohibition order under section 101A has been made by the Authority, and remains in force, against the applicant.

[2/2009]

**87.** [Repealed by Act 2 of 2009]

**87A.** [Repealed by Act 2 of 2009]

### **Power of Authority to impose conditions or restrictions**

**88.**—(1) The Authority may grant a capital markets services licence subject to such conditions or restrictions as it thinks fit.

[2/2009]

(1A) Without limiting subsection (1), where the Authority grants a capital markets services licence to carry on a business of dealing in capital markets products, the Authority may impose conditions or restrictions under subsection (1) restricting the holder of the capital markets services licence to one or more types of capital markets products in respect of which the holder may carry on a business of dealing in capital markets products.

[4/2017]

(2) The Authority may, at any time, by written notice to a holder of a capital markets services licence, vary any condition or restriction or impose such further condition or restriction as it thinks fit.

[2/2009]

(3) Any person who contravenes any condition or restriction in its licence shall be guilty of an offence.

[2/2009]

**89.** [Repealed by Act 2 of 2009]

### **Variation of capital markets services licence**

**90.**—(1) The Authority may, on the application of the holder of a capital markets services licence, vary its licence by adding a regulated activity to those already specified in the licence.

[2/2009]

(1A) The Authority may require an applicant to supply the Authority with such information or documents as it considers necessary in relation to the application.

(2) An application under subsection (1) must be accompanied by a non-refundable prescribed application fee which must be paid in the manner specified by the Authority.

[2/2009]

(3) The Authority may —

(a) approve the application subject to such conditions or restrictions as the Authority thinks fit; or

(b) refuse the application on any of the grounds set out in section 86(4).

[2/2009]

(4) The Authority must not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

### **Deposit to be lodged in respect of capital markets services licence**

**91.**—(1) The Authority may, in granting or varying a capital markets services licence, require the applicant to lodge with the Authority, at the time of its application and in such manner as the Authority may determine, a deposit of such amount as the Authority may prescribe by regulations made under section 100 in respect of that licence and in such form as the Authority may specify.

[2/2009; 4/2017]

(2) The Authority may prescribe the circumstances and purposes for the use of the deposit.

### **False statements in relation to application for grant or variation of capital markets services licence**

**92.** Any person who, in connection with an application for the grant or variation of a capital markets services licence —

(a) without reasonable excuse, makes a statement which is false or misleading in a material particular; or

- (b) without reasonable excuse, 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 \$50,000.

[2/2009]

### **Notification of change of particulars**

**93.—**(1) Where —

- (a) the holder of a capital markets services licence ceases to carry on business in any of the regulated activities to which the licence relates; or

- (b) a change occurs in any matter records of which are required by section 94 to be kept in relation to the holder,

the holder must, not later than 14 days after the occurrence of the event, provide particulars of the event to the Authority in the prescribed form and manner.

[2/2009]

(2) Where a holder of a capital markets services licence ceases to carry on business in all the regulated activities to which the licence relates, it must return the licence to the Authority within 14 days of the date of the cessation.

[2/2009]

### **Records of holders of capital markets services licence**

**94.—**(1) The Authority must keep in such form as it thinks fit records of holders of a capital markets services licence setting out the following information of each holder:

- (a) its name;
- (b) the address of the principal place of business at which it carries on the business in respect of which the licence is held;
- (c) the regulated activity or activities and the type or types of capital markets products to which its licence relates;

- (d) 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;
- (e) such other information as may be prescribed.

[2/2009; 4/2017]

(2) The Authority may publish the information referred to in subsection (1) or any part of it in such manner as it considers appropriate.

[2/2009]

### **Lapsing, revocation and suspension of capital markets services licence**

**95.—**(1) A capital markets services licence lapses —

- (a) if the holder is wound up or otherwise dissolved, whether in Singapore or elsewhere; or
- (b) in the event of such other occurrence or in such other circumstances as may be prescribed.

[2/2009]

(2) The Authority may revoke a capital markets services licence if —

- (a) there exists a ground on which the Authority may refuse an application under section 86;
- (b) the holder of the capital markets services licence fails or ceases to carry on business in all the regulated activities for which it was licensed;
- (ba) the Authority has reason to believe that the holder has not acted in the best interests of the holder's subscribers or customers;
- (c) the Authority has reason to believe that the holder, or any of its officers or employees, has not performed its or his or her duties efficiently, honestly or fairly;
- (d) the holder has contravened any condition or restriction applicable in respect of its licence, any written direction issued to it by the Authority under this Act, or any provision in this Act;

- (da) it appears to the Authority that the holder has failed to satisfy any of its obligations under or arising from —
- (i) this Act; or
  - (ii) any written direction issued by the Authority under this Act;
- (e) the Authority has reason to believe that the holder is carrying on business in any regulated activity for which it was licensed in a manner that is contrary to the interests of the public;
- (ea) upon the Authority exercising any power under section 97E(2) or the Minister exercising any power under Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to the holder, the Authority considers that it is in the public interest to revoke the licence;
- (f) the holder has provided any information or document to the Authority that is false or misleading;
- (g) the holder fails to pay the licence fee referred to in section 85; or
- (h) a prohibition order under section 101A has been made by the Authority, and remains in force, against the holder.

*[2/2009; 34/2012; 10/2013; 31/2017]*

- (3) The Authority may, if it considers it desirable to do so —
- (a) suspend a capital markets services licence for a specific period instead of revoking it under subsection (2); and
  - (b) at any time extend or revoke the suspension.

*[2/2009]*

(4) Subject to subsection (5), the Authority must not revoke or suspend a capital markets services licence under subsection (2) or (3) without giving the holder of the licence an opportunity to be heard.

*[2/2009]*

(5) The Authority may revoke or suspend a capital markets services licence without giving the holder of the licence an opportunity to be heard, on any of the following grounds:



- (a) the holder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, for or in respect of any property of the holder;
- (c) the holder has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;
- (d) a prohibition order under section 101A has been made by the Authority, and remains in force, against the holder.

[2/2009]

(6) Where the Authority has revoked or suspended a capital markets services licence, the holder of that licence must —

- (a) in the case of a revocation of its licence, immediately inform all its representatives by written notice of such revocation, and the representatives who are so informed must cease to act as representatives of that holder; or
- (b) in the case of a suspension of its licence, immediately inform all its representatives by written notice of such suspension, and the representatives who are so informed must cease to act as representatives of that holder during the period of the suspension.

[2/2009]

(7) Any holder of a capital markets services licence who —

- (a) performs a regulated activity while its licence has lapsed or has been revoked or suspended; or
- (b) contravenes subsection (6),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(8) A lapsing, revocation or suspension of a capital markets services licence does not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by the holder of the licence, whether the agreement, transaction or arrangement was entered into before, on or after the revocation, suspension or lapsing of the licence, as the case may be; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[2/2009]

### **Approval of chief executive officer and director of holder of capital markets services licence**

**96.—**(1) Subject to subsection (1B), a holder of a capital markets services licence must not —

- (a) appoint a person as its chief executive officer or director; or
- (b) change the nature of the appointment of a person as a director from one that is non-executive to one that is executive,

unless it has obtained the approval of the Authority.

[2/2009]

(1A) Where a holder of a capital markets services licence has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1)(a), the person may be re-appointed as chief executive officer or director (as the case may be) of the holder immediately upon the expiry of the earlier term without the approval of the Authority.

[2/2009]

(1B) Subsection (1) does not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

- (a) does not reside in Singapore; and
- (b) is not directly responsible for its business in Singapore or any part thereof.

[2/2009]

(2) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority must not refuse an application for approval under subsection (1) without giving the holder of the capital markets services licence an opportunity to be heard.

(4) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the holder of a capital markets services licence an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (aa) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[2/2009]

(5) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

(6) Without affecting the Authority's power to impose conditions or restrictions under section 88, the Authority may, at any time by written notice to the holder of a capital markets services licence, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

[2/2009]

(7) Any person who contravenes any condition imposed under subsection (6) shall be guilty of an offence.

[2/2009]

### **Removal of officer of holder of capital markets services licence**

**97.—**(1) Despite the provisions of any other written law —

- (a) a holder of a capital markets services licence must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and
- (b) a holder of a capital markets services licence which is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (c) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 18 April 2013, being an offence —
  - (i) involving fraud or dishonesty;
  - (ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or
  - (iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him or her in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;
- (g) has had a prohibition order under section 68 of the Financial Advisers Act 2001, section 74 of the Insurance Act 1966 or section 101A or 123ZZC made against him or her that remains in force; or

- (h) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
- (i) which is being or has been wound up by a court; or
  - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

[10/2013; 4/2017]

(1A) Despite the provisions of any other written law, where the Authority is satisfied that a director of a holder of a capital markets services licence which is incorporated in Singapore, or an executive officer of a holder of a capital markets services licence —

- (a) has wilfully contravened or wilfully caused the holder to contravene any provision of this Act;
- (b) has, without reasonable excuse, failed to secure the compliance of the holder with this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act; or
- (c) has failed to discharge any of the duties of his or her office, the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice to the holder, direct the holder to remove the director or executive officer (as the case may be) from his or her office or employment within such period as the Authority may specify in the notice, and the holder must comply with the notice.

[10/2013]

(2) Without affecting any other matter that the Authority may consider relevant, the Authority must, when determining whether a director or an executive officer of a holder of a capital markets services licence has failed to discharge the duties of his or her office for the purposes of subsection (1A)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

[10/2013]

(3) The Authority must not direct a holder of a capital markets services licence to remove a person from his or her office under subsection (1A) without giving the holder an opportunity to be heard.

[10/2013]

(4) [Deleted by Act 10 of 2013]

(5) Where the Authority directs a holder of a capital markets services licence to remove a person from his or her office or employment under subsection (1A), the Authority need not give that person an opportunity to be heard.

[10/2013]

(6) No criminal or civil liability shall be incurred by —

(a) a holder of a capital markets services licence; or

(b) any person acting on behalf of the holder of a capital markets services licence,

in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[10/2013]

(7) In this section, unless the context otherwise requires —

“regulated financial institution” means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act.

[10/2013]

### **Control of take-over of holder of capital markets services licence**

**97A.**—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to

all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

[2/2009]

(2) A person must not enter into any arrangement in relation to shares in the holder of a capital markets services licence that is a company by virtue of which the person would, if the arrangement is carried out, obtain effective control of the holder, unless the person has obtained the prior approval of the Authority to the person's entering into the arrangement.

[2/2009]

(3) An application for the Authority's approval under subsection (2) must be made in writing, and the Authority may approve the application if the Authority is satisfied that —

- (a) the applicant is a fit and proper person to have effective control of the holder of the capital markets services licence;
- (b) having regard to the applicant's likely influence, the holder of a capital markets services licence is likely to continue to conduct its business prudently and comply with the provisions of this Act and directions made thereunder; and
- (c) the applicant satisfies such other criteria as may be prescribed or as may be specified in written directions by the Authority.

[2/2009]

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

- (a) restricting the applicant's disposal or further acquisition of shares or voting power in the holder of a capital markets services licence; or
- (b) restricting the applicant's exercise of voting power in the holder of a capital markets services licence,

and the applicant must comply with such conditions.

[2/2009]

(5) Any condition imposed under subsection (4) has effect despite any provision of the Companies Act 1967 or anything contained in the constitution of the holder of a capital markets services licence.

[2/2009; 4/2017]

(6) For the purposes of this section and section 97B —

- (a) a reference to a person entering into an arrangement in relation to shares includes —
- (i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;
  - (ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of the holder's shares to the first person;
  - (iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to the first person or to the first person's order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; and
  - (iv) becoming a trustee of a trust in respect of those shares;
- (b) a person is regarded as obtaining effective control of the holder of a capital markets services licence by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —
- (i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the holder; or
  - (ii) control, directly or indirectly, 20% or more of the voting power in the holder; and
- (c) a reference to the voting power in the holder of a capital markets services licence is a reference to the total number of votes that may be cast in a general meeting of the holder.

[2/2009]



(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

[2/2009]

### **Objection to control of holder of capital markets services licence**

**97B.**—(1) The Authority may serve a written notice of objection on —

- (a) any person required to obtain the Authority's approval or who has obtained the approval under section 97A; or
- (b) any person who, whether before, on or after 26 November 2010, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the holder of a capital markets services licence or controls, directly or indirectly, 20% or more of the voting power in the holder,

if the Authority is satisfied that —

- (c) any condition of approval imposed on the person under section 97A(4) has not been complied with;
- (d) the person is not or ceases to be a fit and proper person to have effective control of the holder of the capital markets services licence;
- (e) having regard to the likely influence of the person, the holder of a capital markets services licence is not able to or is no longer likely to conduct its business prudently or to comply with the provisions of this Act or any direction made thereunder;
- (f) the person does not or ceases to satisfy such criteria as may be prescribed;
- (g) the person has provided false or misleading information or documents in connection with an application under section 97A; or

- (h) the Authority would not have granted its approval under section 97A had it been aware, at that time, of circumstances relevant to the person's application for such approval.

[2/2009]

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

- (a) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) a prohibition order under section 101A has been made by the Authority, and remains in force, against the person;
- (d) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

[2/2009]

(3) The Authority must, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection must —

- (a) take such steps as are necessary to ensure that the person ceases to be a party to the arrangement described in section 97A(2) or ceases to have control of a holder of a capital markets services licence in the manner described in subsection (1)(b); or
- (b) comply with such other requirements as the Authority may specify in written directions.

[2/2009]

(4) Any person served with a notice of objection under this section must comply with the notice.

[2/2009]

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

[2/2009]

### **Information of insolvency, etc.**

**97C.**—(1) Any holder of a capital markets services licence which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, must immediately inform the Authority of that fact.

[10/2013]

(2) Any holder of a capital markets services licence which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Interpretation of sections 97D to 97I**

**97D.** In this section and sections 97E to 97I, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to a holder of a capital markets services licence, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the holder, or acting in an equivalent capacity in relation to the holder;

“relevant business” means any business of a holder of a capital markets services licence —

(a) which the Authority has assumed control of under section 97E; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 97E;

“statutory adviser” means a statutory adviser appointed under section 97E;

“statutory manager” means a statutory manager appointed under section 97E.

[10/2013]

**Action by Authority if holder of capital markets services licence unable to meet obligations, etc.**

**97E.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

- (a) a holder of a capital markets services licence informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (b) a holder of a capital markets services licence becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that a holder of a capital markets services licence —
  - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors;
  - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
  - (iii) has contravened any of the provisions of this Act; or
  - (iv) has failed to comply with any condition or restriction in its licence (being a condition or restriction imposed under section 88(1) or (2)); or
- (d) the Authority considers it in the public interest to do so.

[10/2013]

- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the holder of a capital markets services licence immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
  - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the holder of a capital markets services licence on the proper management of such of the business of the holder as the Authority may determine; or
  - (c) assume control of and manage such of the business of the holder of a capital markets services licence as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) In the case of a holder of a capital markets services licence incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the holder under subsection (2) is only in relation to —

- (a) the business or affairs of the holder carried on in, or managed in or from, Singapore; or
- (b) the property of the holder located in Singapore, or reflected in the books of the holder in Singapore (as the case may be) in relation to its operations in Singapore.

[10/2013]

(4) Where the Authority appoints 2 or more persons as the statutory manager of a holder of a capital markets services licence, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;

- (b) must be discharged or exercised by such persons jointly; and
- (c) must be discharged or exercised by a specified person or such persons.

[10/2013]

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 95(2)(ea), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

- (a) the exercise or purported exercise of any power under this Act;
- (b) the performance or purported performance of any function or duty under this Act; or
- (c) the compliance or purported compliance with this Act.

[10/2013]

(7) Any holder of a capital markets services licence that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

**Effect of assumption of control under section 97E**

**97F.**—(1) Upon assuming control of the relevant business of a holder of a capital markets services licence, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence, the Authority or statutory manager —

- (a) must manage the relevant business of the holder in the name of and on behalf of the holder; and
- (b) is deemed to be an agent of the holder.

[10/2013]

(3) In managing the relevant business of a holder of a capital markets services licence, the Authority or statutory manager —

- (a) must consider the interests of the public or the section of the public referred to in section 97E(1)(c)(i), and the need to protect investors; and
- (b) has all the duties, powers and functions of the members of the board of directors of the holder (collectively and individually) under this Act, the Companies Act 1967 and the constitution of the holder, including powers of delegation, in relation to the relevant business of the holder; but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the holder under the Companies Act 1967 or the constitution of the holder.

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of a holder of a capital markets services licence by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the holder, which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its

approval, by written notice to the person and the holder, for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the holder.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of a holder of a capital markets services licence, the Authority may at any time, by written notice to the person and the holder, revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of a holder of a capital markets services licence is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the holder during the period when the Authority or statutory manager is in control of the relevant business of the holder —

(a) the act or purported act of the person is invalid and of no effect; and

(b) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of a holder of a capital markets services licence in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the holder during the period when the Authority or statutory manager is in control of the relevant business of the holder —

(a) the act or purported act of the person is invalid and of no effect; and



(b) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence —

(a) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the holder,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(b) no person may exercise any voting or other right attached to any share in the holder in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Duration of control**

**97G.**—(1) The Authority must cease to be in control of the relevant business of a holder of a capital markets services licence when the Authority is satisfied that —

- (a) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 97E(1)(c)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of a holder of a capital markets services licence on the date of the statutory manager's appointment as a statutory manager.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of a holder of a capital markets services licence may be revoked by the Authority at any time —

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist; or
  - (ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 97E(1)(c)(i) or for the protection of investors; or

(b) on any other ground,

and upon such revocation, the statutory manager ceases to be in control of the relevant business of the holder.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

- (a) the Authority's assumption of control of the relevant business of a holder of a capital markets services licence;
- (b) the cessation of the Authority's control of the relevant business of a holder of a capital markets services licence;

- (c) the appointment of a statutory manager in relation to the relevant business of a holder of a capital markets services licence; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of a holder of a capital markets services licence.

[10/2013]

### **Responsibilities of officers, member, etc., of holder of capital markets services licence**

**97H.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence —

- (a) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the holder to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the holder which is comprised in, forms part of or relates to the relevant business of the holder, and which is in the person's possession or control; and
- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the holder must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the holder, within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

- (2) Any person who —
- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
  - (b) in purported compliance with subsection (1)(b), knowingly or recklessly provides any information or document that 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 \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Remuneration and expenses of Authority and others in certain cases**

**97I.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by a holder of a capital markets services licence —

- (a) to a statutory manager or statutory adviser appointed in relation to the holder, whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the holder, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The holder of a capital markets services licence must reimburse the Authority any remuneration and expenses payable by the holder to a statutory manager or statutory adviser.

[10/2013]

### **Appeals**

**98.**—(1) Subject to subsection (2), any person who is aggrieved by —

- (a) the refusal of the Authority to grant or vary a capital markets services licence;
- (b) the revocation or suspension of a capital markets services licence by the Authority;
- (c) [*Deleted by Act 2 of 2009*]
- (d) the refusal of the Authority to grant an approval to a holder of a capital markets services licence to appoint a person as its chief executive officer or director; or
- (e) the direction of the Authority to a holder of a capital markets services licence to remove an officer from office or employment,

may within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[2/2009]

(2) An appeal under subsection (1)(d) or (e) may only be made by the holder of a capital markets services licence.

### **Exemptions from requirement to hold capital markets services licence**

**99.**—(1) The following persons are exempted in respect of the following regulated activities from the requirement to hold a capital markets services licence to carry on business in such regulated activities:

- (a) any bank licensed under the Banking Act 1970 in respect of any regulated activity;
- (b) any merchant bank licensed under the Banking Act 1970 in respect of any regulated activity;
- (c) any finance company licensed under the Finance Companies Act 1967 in respect of any regulated activity that is not prohibited by that Act or for which an exemption from section 25(2) of that Act has been granted;
- (d) any company or co-operative society licensed under the Insurance Act 1966 in respect of fund management for the purpose of carrying out insurance business;

- (e) [*Deleted by Act 1 of 2005*]
- (f) any approved exchange, recognised market operator or approved holding company in respect of any regulated activity that is solely incidental to its operation of an organised market or to its performance as an approved holding company, as the case may be;
- (g) any approved clearing house or recognised clearing house in respect of any regulated activity that is solely incidental to its operation of a clearing facility;
- (h) such other person or class of persons in respect of any regulated activity as may be exempted by the Authority.

[34/2012; 11/2013; 4/2017; 1/2020]

(2) [*Deleted by Act 1 of 2005*]

(3) [*Deleted by Act 1 of 2005*]

(4) The Authority may by regulations or by written notice impose such conditions or restrictions on an exempt person or its representative in relation to the conduct of the regulated activity or any related matter as the Authority thinks fit and the exempt person or its representative (as the case may be) must comply with such conditions or restrictions.

(5) Any exempt person or representative of an exempt person, who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(6) The Authority may withdraw an exemption granted to any person under this section —

- (a) if it contravenes any provision of this Act which is applicable to it or any condition or restriction imposed on it under subsection (4);
- (aa) if it fails to pay the annual fee referred to in section 99A;
- (b) if it contravenes any direction issued to it under section 101(1); or

- (c) if the Authority considers that it is carrying on business in a manner that is, in the opinion of the Authority, contrary to the public interest.

[2/2009]

(7) Where the Authority withdraws an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

(8) A withdrawal under subsection (6) of an exemption granted to any person does not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by the person, whether the agreement, transaction or arrangement was entered into before or after, the withdrawal of the exemption; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(9) A person that is aggrieved by a decision of the Authority made under subsection (6) may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

### **Annual fees payable by exempt person and certain representatives**

**99A.**—(1) Every exempt person and every representative of a person exempted under section 99(1)(f), (g) or (h) must pay to the Authority such annual fee in respect of each regulated activity as may be prescribed and in such manner and on such date as may be specified by the Authority.

[2/2009]

(2) Any annual fee paid by an exempt person or a representative of a person exempted under section 99(1)(f), (g) or (h) to the Authority in respect of any regulated activity must not be refunded or remitted if —

- (a) in the case of the exempt person —
- (i) its exemption is withdrawn;

- (ii) it fails or ceases to carry on business in that regulated activity; or
  - (iii) a prohibition order has been made against it under section 101A,  
during the period to which the annual fee relates; and
- (b) in the case of a representative of a person exempted under section 99(1)(f), (g) or (h) —
- (i) the exemption of the exempt person is withdrawn;
  - (ia) a prohibition order has been made against the representative under section 101A; or
  - (ii) the representative fails or ceases to act as a representative in respect of that regulated activity,  
during the period to which the annual fee relates.

[2/2009]

(3) Subject to subsection (2), the Authority may, where it considers appropriate, refund or remit the whole or part of any annual fee paid or payable to it.

(4) Where an exempt person or a representative of a person exempted under section 99(1)(f), (g) or (h) fails to pay the fee by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[2/2009]

*Division 1A — Voluntary Transfer of Business of  
Holder of Capital Markets Services Licence*

### **Interpretation of this Division**

**99AA.** In this Division, unless the context otherwise requires —

“business” includes affairs, property, right, obligation and liability;

“Court” means the General Division of the High Court;



“debenture” has the meaning given by section 4(1) of the Companies Act 1967;

“property” includes property, right and power of every description;

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means a holder of a capital markets services licence, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of a holder of a capital markets services licence, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Division;

“transferor” means a holder of a capital markets services licence the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

*[10/2013; 40/2019]*

### **Voluntary transfer of business**

**99AB.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of a holder of a capital markets services licence) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of a holder of a capital markets services licence; and
- (c) the Court has approved the transfer.

*[10/2013]*

(2) Subsection (1) does not affect the right of a holder of a capital markets services licence to transfer the whole or any part of its business under any law.

*[10/2013]*

(3) The Authority may consent to a transfer under subsection (1)(a) if the Authority is satisfied that —

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this Division.

[10/2013]

(8) Any person who —

- (a) without reasonable excuse, fails to comply with any requirement under subsection (7); or
- (b) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document that 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 \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further

fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

### **Approval of transfer**

**99AC.**—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

[10/2013]

- (2) Before making an application under subsection (1) —
- (a) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;
  - (b) the transferor must obtain the consent of the Authority under section 99AB(1)(a);
  - (c) the transferor and the transferee must, if they intend to serve on their respective customers a summary of the transfer, obtain the Authority's approval of the summary;
  - (d) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
  - (e) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days

after the publication of the notice referred to in paragraph (d) in the *Gazette*; and

- (f) unless the Court directs otherwise, the transferor and the transferee must serve on their respective customers affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

- (a) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
- (b) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 99AB(1)(a) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
- (b) refuse to approve the transfer.

[10/2013]

(6) If the transferee is not granted a capital markets services licence by the Authority, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee being granted a capital markets services licence by the Authority.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;

- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) the provisions to be made for persons who are affected by the transfer;
- (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to any property which is held by the transferor as trustee; and
- (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the

appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

## *Division 2 — Representatives*

### **Acting as representative**

**99B.**—(1) No person may act as a representative in respect of any type of regulated activity or hold himself or herself out as doing so, unless the person is —

- (a) an appointed representative in respect of that type of regulated activity;

- (b) a provisional representative in respect of that type of regulated activity;
- (c) a temporary representative in respect of that type of regulated activity; or
- (d) a representative of an exempt person under section 99(1)(f), (g) or (h), in so far as —
  - (i) the type and scope of the regulated activity carried out by the firstmentioned person are within the type and scope of, or are the same as, that carried out by the exempt person (in the exempt person's capacity as such); and
  - (ii) the manner in which the firstmentioned person carries out that type of regulated activity is the same as the manner in which the exempt person (in the exempt person's capacity as such) carries out that type of regulated activity.

[2/2009]

(2) The Authority may exempt any person or class of persons from subsection (1), subject to such conditions or restrictions as the Authority may impose.

[2/2009]

(3) A principal must not permit any individual to carry on business in any type of regulated activity on its behalf unless —

- (a) the individual is an appointed representative, provisional representative or temporary representative in respect of that type of regulated activity; or
- (b) the principal is an exempt person under section 99(1)(f), (g) or (h) and —
  - (i) the type and scope of the regulated activity carried out by the individual are within the type and scope of, or are the same as, that carried out by the exempt person (in the exempt person's capacity as such); and
  - (ii) the manner in which the individual carries out that type of regulated activity is the same as the manner in which the exempt person (in the exempt person's

capacity as such) carries out that type of regulated activity.

[2/2009]

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

### **Records and public register of representatives**

**99C.**—(1) The Authority must keep in such form as it thinks fit records of the following information of each appointed representative, provisional representative and temporary representative:

- (a) his or her name;
- (b) the name of his or her current principal and every past principal, if any;
- (c) the current and past types of regulated activities performed by him or her, the types of capital markets products in respect of which he or she performed each regulated activity and the date of commencement and cessation (if any) of his or her performance of such activities;
- (d) where the business of the principal for which he or she acts is carried on under a name or style other than the name of the principal, the name or style under which the business is carried on;



(e) disciplinary proceedings or other action taken by the Authority against him or her and published under section 322;

(f) such other information as may be prescribed.

[2/2009; 4/2017]

(2) The information referred to in subsection (1) need only be kept for such period of time as the Authority considers appropriate.

[2/2009]

(3) The Authority may reproduce the records referred to in subsection (1) or any part of them in a public register of representatives which must be published in such manner as it considers appropriate.

[2/2009]

### **Appointed representative**

**99D.**—(1) For the purposes of this Act, an appointed representative in respect of a type of regulated activity is an individual —

- (a) who satisfies such entry and examination requirements as the Authority may specify for that type of regulated activity, the fact of which has been notified to the Authority either in the document lodged under section 99H(1), or (if applicable) under section 99E(5) within the time prescribed under that provision;
- (b) whose name is entered in the public register of representatives as an appointed representative;
- (c) whose status as an appointed representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity;
- (d) whose entry in the public register of representatives indicates that he or she is appointed to carry on business in that type of regulated activity and does not indicate that he or she has ceased to be so; and

(e) whose principal —

- (i) is licensed to carry on business in that type of regulated activity; or
- (ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d).

[2/2009]

(2) For the purpose of subsection (1)(a), the Authority must, by direction published in such manner as may be prescribed, specify the examination requirements for each type of regulated activity.

[2/2009]

(3) The Authority may require the principal or individual to provide it with such information or documents as the Authority considers necessary in relation to the proposed appointment of the individual as an appointed representative, and the principal or individual (as the case may be) must comply with such a request.

[2/2009]

(4) An individual ceases to be an appointed representative in respect of any type of regulated activity on the date —

- (a) he or she ceases to be the principal's representative or to carry out that type of regulated activity for that principal, the fact of which has been notified to the Authority under subsection (8);
- (b) his or her principal ceases to carry on business in that type of regulated activity;
- (c) the licence of his or her principal is revoked or lapses or a prohibition order under section 101A is made against his or her principal prohibiting it from carrying out that type of regulated activity;
- (d) the individual dies; or
- (e) of the occurrence of such other circumstances as the Authority may prescribe.

[2/2009]

(5) An individual is not treated as an appointed representative during the period in which the licence of his or her principal is suspended.

[2/2009]

(6) Nothing in subsection (4) or (5) prevents the individual from being treated as an appointed representative in respect of that type of regulated activity if he or she becomes a representative of a new principal in respect of that type of regulated activity and subsection (1) is complied with.

[2/2009]

(7) Subsections (4) and (5) do not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement relating to that type of regulated activity entered into by that individual, whether the agreement, transaction or arrangement was entered into before, on or after the cessation or date of suspension; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[2/2009]

(8) A principal must, no later than the next business day after the day —

(a) an individual ceases to be the principal's representative; or

(b) an individual who is the principal's representative ceases to carry on business in any type of regulated activity which the individual is appointed to carry on business in,

provide particulars of such cessation to the Authority, in the prescribed form and manner.

[2/2009]

### **Provisional representative**

**99E.**—(1) For the purposes of this Act, a provisional representative in respect of a type of regulated activity is an individual —

(a) who satisfies such entry requirements as the Authority may specify for that type of regulated activity;

- (b) who intends to undergo an examination in order to satisfy the examination requirements specified by the Authority under section 99D(2) for that type of regulated activity, the fact of which has been notified to the Authority in the document lodged under section 99H(1);
- (c) whose name is entered in the public register of representatives as a provisional representative;
- (d) whose status as a provisional representative has not currently been revoked or suspended and who has not currently been prohibited by the Authority from carrying on business in that type of regulated activity;
- (e) whose entry in the public register of representatives indicates that he or she is appointed to carry on business in that type of regulated activity and does not indicate that he or she has ceased to be so;
- (f) whose principal —
  - (i) is licensed to carry on business in that type of regulated activity; or
  - (ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d);
- (g) who has not previously been appointed as a provisional representative by the Authority; and
- (h) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a provisional representative.

[2/2009]

(2) An individual may only be a provisional representative in respect of any type of regulated activity for such period of time as the Authority may specify against his or her name in the public register of representatives.

[2/2009]

(3) A provisional representative in respect of any type of regulated activity immediately ceases to be one —

- (a) upon the expiry of the period of time specified by the Authority under subsection (2);
- (b) if he or she fails to comply with any condition or restriction imposed on him or her under section 99N;
- (c) upon his or her principal informing the Authority of the satisfaction of the examination requirements specified for that or any other type of regulated activity under subsection (5); or
- (d) on the occurrence of such other circumstances as the Authority may prescribe.

[2/2009]

(4) Section 99D(3) to (8) (other than section 99D(4)(e)) applies to a provisional representative —

- (a) as if the reference in section 99D(6) to section 99D(1) were a reference to subsection (1); and
- (b) with such other modifications and adaptations as the differences between provisional representatives and appointed representatives require.

[2/2009]

(5) Where a provisional representative in respect of a type of regulated activity has satisfied the examination requirements specified for that type of regulated activity, his or her principal must inform the Authority of that fact in the prescribed form and manner and within the prescribed time.

[2/2009]

### **Temporary representative**

**99F.**—(1) For the purposes of this Act, a temporary representative in respect of a type of regulated activity is an individual —

- (a) who satisfies such entry requirements as the Authority may specify for that type of regulated activity;
- (b) whose name is entered in the public register of representatives as a temporary representative;
- (c) whose status as a temporary representative has not currently been revoked or suspended and who has not

currently been prohibited by the Authority from carrying on business in that type of regulated activity;

- (d) whose entry in the public register of representatives indicates that he or she is appointed to carry on business in that type of regulated activity and does not indicate that he or she has ceased to be so;
- (e) whose principal —
  - (i) is licensed to carry on business in that type of regulated activity; or
  - (ii) carries on business in that type of regulated activity in its capacity as a person exempted from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d); and
- (f) who is not, by virtue of any circumstances prescribed by the Authority, disqualified from acting as a temporary representative.

[2/2009]

(2) An individual may only be a temporary representative in respect of any type of regulated activity for such period of time as the Authority may specify against his or her name in the public register of representatives.

[2/2009]

(3) A temporary representative in respect of any type of regulated activity immediately ceases to be one —

- (a) upon the expiry of the period of time specified by the Authority under subsection (2);
- (b) if he or she fails to comply with any condition or restriction imposed on him or her under section 99N; or
- (c) on the occurrence of such other circumstances as the Authority may prescribe.

[2/2009]

(4) Section 99D(3) to (8) (other than section 99D(4)(e)) applies to a temporary representative —

- (a) as if the reference in section 99D(6) to section 99D(1) were a reference to subsection (1); and
- (b) with such other modifications and adaptations as the differences between temporary representatives and appointed representatives require.

[2/2009]

## **Offences**

**99G.**—(1) Any person who contravenes section 99D(3), 99E(4) (in relation to the application of section 99D(3) to a provisional representative) or 99F(4) (in relation to the application of section 99D(3) to a temporary representative) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[2/2009]

(2) Any person who contravenes section 99D(8), 99E(4) (in relation to the application of section 99D(8) to a provisional representative), 99F(4) (in relation to the application of section 99D(8) to a temporary representative) or 99H(5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

## **Lodgment of documents**

**99H.**—(1) A principal who desires to appoint an individual as an appointed, provisional or temporary representative in respect of any type of regulated activity must lodge the following documents with the Authority in such form and manner as the Authority may prescribe:

- (a) a notice of intent by the principal to appoint the individual as an appointed, provisional or temporary representative in respect of that type of regulated activity;
- (b) a certificate by the principal that the individual is a fit and proper person to be an appointed, provisional or temporary representative in respect of that type of regulated activity;

- (c) in the case of a provisional or temporary representative, an undertaking by the principal to undertake such responsibilities in relation to the representative as may be prescribed.

[2/2009]

(1A) Subsection (1) does not apply to a principal who desires to appoint, as an appointed representative in respect of any type of regulated activity, an individual who is a provisional representative in respect of that type of regulated activity, if —

- (a) that individual has satisfied the examination requirements specified for that type of regulated activity; and
- (b) the principal has informed the Authority of that fact in the prescribed form and manner under section 99E(5).

[34/2012]

(2) Subject to section 99M, the Authority must, upon receipt of the documents lodged in accordance with subsection (1), enter in the public register of representatives the name of the representative, whether he or she is an appointed, provisional or temporary representative, the type of regulated activity which he or she may carry on business in, and such other particulars as the Authority considers appropriate.

[2/2009]

(3) The Authority may refuse to enter in the public register of representatives the particulars referred to in subsection (2) of the representative if the fee referred to in section 99K(1) or (4) (if applicable) is not paid.

[2/2009]

(4) A principal who submits a certificate under subsection (1)(b) must keep, in such form and manner and for such period as the Authority may prescribe, copies of all information and documents which the principal relied on in giving the certificate.

[2/2009]

(5) Where a change occurs in any particulars of the appointed, provisional or temporary representative in any document required to be provided to the Authority under subsection (1), the principal must, no later than 14 days after the occurrence of such change, provide



particulars of such change to the Authority, in the prescribed form and manner.

[2/2009]

### **Exemption**

**99I.**—(1) The Authority may exempt any person or class of persons from any of the requirements of sections 99D to 99H.

[2/2009]

(2) Such exemption is subject to such conditions or restrictions as the Authority may impose.

[2/2009]

### **Representative to act for only one principal**

**99J.**—(1) Unless otherwise approved by the Authority in writing, no appointed representative, temporary representative or provisional representative may at any one time be a representative of more than one principal.

[2/2009]

(2) Despite subsection (1), an appointed representative may be a representative of more than one principal if the principals are related corporations.

[2/2009]

(3) The Authority may require an applicant for approval under subsection (1) to provide it with such information or documents as the Authority considers necessary in relation to the application.

[2/2009]

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

### **Lodgment and fees**

**99K.**—(1) An individual must, by the prescribed time, pay to the Authority such fee as the Authority may prescribe for the lodgment of documents under section 99H by his or her principal in relation to his

or her appointment as an appointed, provisional or temporary representative.

[2/2009]

(2) An individual who is an appointed or provisional representative in respect of any type of regulated activity must, by the prescribed time each year, pay such annual fee as the Authority may prescribe in relation to the retention of his or her name, in the public register of representatives, as an appointed or provisional representative in respect of that type of regulated activity.

[34/2012]

(3) An individual who is a temporary representative must, by the prescribed time, pay such fee as the Authority may prescribe in relation to the retention of his or her name in the public register of representatives as a temporary representative.

[2/2009]

(4) A representative must pay such fee as the Authority may prescribe for any resubmission of a form or change in the particulars of a form lodged with the Authority in relation to his or her appointment as an appointed, provisional or temporary representative.

[2/2009]

(5) Unless otherwise prescribed by the Authority, any fee paid to the Authority under this section is not to be refunded.

[2/2009]

(6) Where the representative fails to pay the fee referred to in subsection (1), (2) or (3) by the date on which such fee is due, the Authority may impose a late payment fee of a prescribed amount for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[2/2009]

(7) The fees referred to in this section must be paid in the manner specified by the Authority.

[2/2009]

### **Additional regulated activity**

**99L.**—(1) The principal of an appointed representative may at any time lodge a notice with the Authority of its intention to appoint the representative as an appointed representative in respect of a type of

regulated activity in addition to that indicated against the representative's name in the public register of representatives.

[2/2009]

(2) The notification must be lodged in such form and manner as may be prescribed and must be accompanied by a certificate by the principal that the representative is a fit and proper person to be a representative in respect of the additional type of regulated activity.

[2/2009]

(3) Subject to section 99M, the Authority must, upon receipt of the notification, enter in the public register of representatives the additional type of regulated activity as one which the representative may carry on business in as a representative.

[2/2009]

(4) The Authority may, before entering in the public register of representatives the matter set out in subsection (3), require the principal or representative to provide it with such information or documents as the Authority considers necessary.

[2/2009]

(5) A notification under subsection (1) must be accompanied by a non-refundable prescribed fee which must be paid in the manner specified by the Authority.

[2/2009]

### **Power of Authority to refuse entry or revoke or suspend status of appointed, provisional or temporary representative**

**99M.**—(1) Subject to regulations made under this Act, the Authority may refuse to enter the name and other particulars of an individual in the public register of representatives, refuse to enter an additional type of regulated activity for an appointed representative in that register, or revoke the status of an individual as an appointed, provisional or temporary representative if —

- (a) being an appointed, provisional or temporary representative, he or she fails or ceases to act as a representative in respect of all of the types of regulated activities that were notified to the Authority as activities which he or she is appointed to carry on business in as a representative;

- (b) he or she or his or her principal has not provided the Authority with such information or documents as the Authority may require;
- (c) he or she is an undischarged bankrupt, whether in Singapore or elsewhere;
- (d) execution against him or her in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) he or she has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) he or she —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or
  - (ii) has been convicted of an offence under this Act;
- (g) in the case of the proposed appointment of an appointed, provisional or temporary representative in respect of a type of regulated activity, or of an application to enter an additional type of regulated activity for an appointed representative in the register —
  - (i) the Authority is not satisfied as to his or her educational or other qualification or experience having regard to the nature of the duties he or she is to perform in relation to that type of regulated activity;
  - (ii) he or she or his or her principal fails to satisfy the Authority that he or she is a fit and proper person to be an appointed, provisional or temporary representative or to carry on business in that type of regulated activity;

- (iii) the Authority is not satisfied as to his or her record of past performance or expertise having regard to the nature of the duties which he or she is to perform in relation to that type of regulated activity;
  - (iv) the Authority has reason to believe that he or she will not carry on business in that type of regulated activity efficiently, honestly or fairly;
- (h) in the case of the revocation of the status of an individual as an appointed, provisional or temporary representative —
- (i) he or she or his or her principal fails to satisfy the Authority, pursuant to a requirement imposed by the Authority as a condition for him or her to be an appointed, provisional or temporary representative, under section 99N or by regulations (as the case may be), that he or she remains a fit and proper person to be an appointed, provisional or temporary representative or to carry on business in the type of regulated activity for which he or she is appointed;
  - (ii) the Authority is not satisfied with —
    - (A) his or her educational or other qualification or experience (being qualification or experience not known to the Authority at the time his or her name and particulars are entered in the public register of representatives); or
    - (B) his or her record of past performance or expertise,  
having regard to the nature of his or her duties as an appointed, provisional or temporary representative;
  - (iii) the Authority has reason to believe that he or she will not carry, or has not carried, on business in the type of regulated activity for which he or she is appointed efficiently, honestly or fairly; or

- (iv) the Authority has reason to believe that he or she has not acted in the best interests of the subscribers or customers of his or her principal;
- (i) the Authority has reason to believe that he or she may not be able to act in the best interests of the subscribers or customers of his or her principal, having regard to his or her reputation, character, financial integrity and reliability;
- (j) the Authority is not satisfied as to his or her financial standing;
- (k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the individual or any person employed by or associated with him or her for the purpose of his or her business;
- (l) the individual is in arrears of the payment of such contributions on his or her own behalf to the Central Provident Fund as are required under the Central Provident Fund Act 1953;
- (m) the Authority is of the opinion that it would be contrary to the interests of the public to enter the individual's name in the public register of representatives or allow him or her to continue carrying on business as an appointed, provisional or temporary representative or to carry on business in that additional type of regulated activity, as the case may be;
- (n) the Authority has reason to believe that any information or document that is provided by him or her or his or her principal to the Authority is false or misleading;
- (o) he or she has contravened any provision of this Act applicable to him or her, any condition or restriction imposed on him under this Act or any direction issued to him or her by the Authority under this Act;
- (oa) it appears to the Authority that he or she has failed to satisfy any of his or her obligations under or arising from —

- (i) this Act; or
  - (ii) any written direction issued by the Authority under this Act;
- (p) a prohibition order under section 101A has been made by the Authority, and remains in force, against him or her;
- (q) the licence of his or her principal is revoked;
- (r) the individual fails to pay any fee referred to in section 99K;
- (s) in the case of the proposed appointment of a temporary representative in respect of a type of regulated activity —
- (i) he or she is not licensed, authorised or otherwise regulated as a representative in relation to a comparable type of regulated activity in a foreign jurisdiction;
  - (ii) the Authority is not satisfied that the laws and practices of the jurisdiction under which the individual is so licensed, authorised or regulated provide protection to investors comparable to that applicable to an appointed representative under this Act; or
  - (iii) the period of his or her proposed appointment, together with the period of any past appointment (or part thereof) that falls within a prescribed period before the date of expiry of his or her proposed appointment, exceeds the permitted period prescribed by the Authority; or
- (t) in the case of the proposed appointment of a provisional representative in respect of a type of regulated activity —
- (i) he or she is not or was not previously licensed, authorised or otherwise regulated as a representative in relation to a comparable type of regulated activity in a foreign jurisdiction for such minimum period as may be prescribed for this sub-paragraph;

- (ii) he or she was previously so licensed, authorised or regulated in a foreign jurisdiction but the period between the date of his or her ceasing to be so licensed, authorised or regulated and the date of his or her proposed appointment as a provisional representative exceeds such period as may be prescribed for this sub-paragraph; or
- (iii) the Authority is not satisfied that the laws and practices of the jurisdiction under which the individual is or was so licensed, authorised or regulated provide protection to investors comparable to that applicable to an appointed representative under this Act.

[2/2009; 34/2012]

- (2) The Authority may, if it considers it desirable to do so —
- (a) instead of revoking the status of an individual as an appointed, provisional or temporary representative, suspend that status for such period as the Authority may determine; and
  - (b) at any time —
    - (i) extend the period of suspension; or
    - (ii) revoke the suspension.

[2/2009]

(3) An individual whose status as an appointed, provisional or temporary representative has been revoked is deemed not to be an appointed, provisional or temporary representative, as the case may be.

[2/2009]

(4) Where the status of an individual as an appointed, provisional or temporary representative has been suspended, he or she is deemed not to be an appointed, provisional or temporary representative (as the case may be) during the period of suspension.

[2/2009]

(5) Where the Authority has revoked the status of an individual as an appointed, provisional or temporary representative, the Authority must —



- (a) indicate against his or her name in the public register of representatives that fact, which indication must remain in the register for such period as the Authority considers appropriate; or
- (b) remove his or her name from the register.

[2/2009]

(6) Where the Authority has suspended the status of an individual as an appointed, provisional or temporary representative, the Authority must indicate against his or her name in the public register of representatives that fact and the period of the suspension.

[2/2009]

(7) Where the Authority has extended or revoked a suspension of the status of an individual as an appointed, provisional or temporary representative, it must indicate against his or her name in the public register of representatives the new expiry date of the suspension, or indicate that he or she is no longer suspended, as the case may be.

[2/2009]

(8) The Authority must not take any action under subsection (1) or (2)(a) on the ground referred to in subsection (1)(n), if —

- (a) in a case where the information or document was furnished by the individual to the Authority, the individual proves that he or she had —
  - (i) made all inquiries (if any) that were reasonable in the circumstances; and
  - (ii) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or
- (b) in a case where the information or document was provided by the principal to the Authority and —
  - (i) such information or document was provided to the principal by the individual, the individual proves that he or she had —
    - (A) made all inquiries (if any) that were reasonable in the circumstances; and

- (B) after doing so, believed on reasonable grounds that the information or document was not false or misleading; or
- (ii) such information or document was not provided to the principal by the individual, the principal proves that the principal had —
  - (A) made all inquiries (if any) that were reasonable in the circumstances; and
  - (B) after doing so, believed on reasonable grounds that the information or document was not false or misleading.

[2/2009]

(9) Subject to subsection (10), the Authority must not take any action under subsection (1) or (2)(a) or (b)(i) without giving the individual an opportunity to be heard.

[2/2009]

(10) The Authority may take action under subsection (1) or (2)(a) or (b)(i) on any of the following grounds without giving the individual an opportunity to be heard:

- (a) he or she is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) he or she has been convicted, whether in Singapore or elsewhere, of an offence —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more;
- (c) a prohibition order under section 101A has been made by the Authority, and remains in force, against the individual;
- (d) the ground referred to in subsection (1)(s)(i) or (iii) or (t)(i) or (ii).

[2/2009]

(11) Any revocation or suspension by the Authority does not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to any regulated activity entered into by such individual, whether the agreement, transaction or arrangement was entered into before, on or after the revocation or suspension, as the case may be; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[2/2009]

### **Power of Authority to impose conditions or restrictions**

**99N.**—(1) The Authority may, by written notice to an appointed, provisional or temporary representative, impose such conditions or restrictions as it thinks fit on him or her.

[2/2009]

(2) Without limiting subsection (1), the Authority may, in entering the appointed, provisional or temporary representative's name in the public register of representatives, impose conditions or restrictions with respect to the type of regulated activity which he or she may or may not carry on business in.

[2/2009]

(3) The Authority may, at any time by written notice to the appointed, provisional or temporary representative, vary any condition or restriction or impose such further condition or restriction as it thinks fit.

[2/2009]

(4) Any person who contravenes any condition or restriction imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

**False statements in relation to notification of appointed, provisional or temporary representative**

**99O.**—(1) Any principal who, in connection with the lodgment of any document under section 99H —

- (a) makes a statement which is false or misleading in a material particular; or
- (b) omits to state any matter or thing without which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[2/2009]

(2) Any individual who, in connection with the lodgment by his or her principal of any document under section 99H —

- (a) makes a statement to his or her principal which is false or misleading in a material particular, being a statement subsequently lodged with the Authority; or
- (b) omits to state any matter or thing to his or her principal as a result of which the document is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[2/2009]

(3) Any person who, when required to provide any document or information to the Authority under section 99D(3), 99E(4) (in relation to the application of section 99D(3) to a provisional representative) or 99F(4) (in relation to the application of section 99D(3) to a temporary representative) —

- (a) makes a statement to the Authority which is false or misleading in a material particular; or

- (b) omits to state any matter or thing to the Authority without which the document or information is misleading in a material respect,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[2/2009]

(4) A person referred to in subsection (1), (2) or (3) shall not be guilty of an offence if the person proves that the person —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the statement made or the omission to state the matter or thing (as the case may be) was not false or misleading.

[2/2009]

## **Appeals**

**99P.** Any person who is aggrieved by —

- (a) the refusal of the Authority under section 99M(1) to enter his or her name and other particulars in the public register of representatives, or to enter an additional type of regulated activity for him or her in that register; or
- (b) the revocation or suspension of his or her status as an appointed, provisional or temporary representative under section 99M(1) or (2)(a),

may, within 30 days after he or she is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[2/2009]

### *Division 3 — General*

## **Power of Authority to make regulations**

**100.**—(1) Without affecting section 341, the Authority may make regulations relating to the grant of a capital markets services licence, the proposed appointment of an individual as an appointed, provisional or temporary representative, the entering of his or her name or an additional type of regulated activity in the public register

of representatives, and the revocation or suspension of his or her status as an appointed, provisional or temporary representative, and requirements applicable to the holder of a capital markets services licence, an exempt person, a representative or a class of such persons.

[2/2009]

- (2) Regulations made under this section may provide —
- (a) that a contravention of any specified provision thereof shall be an offence; and
  - (b) for penalties not exceeding a fine of \$100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

### **Power of Authority to issue written directions**

**101.**—(1) The Authority may, if it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue written directions, either of a general or specific nature, to any holder of a capital markets services licence, exempt person, representative, or class of such persons, to comply with such requirements as the Authority may specify in the written directions.

[2/2009; 34/2012]

- (2) Without limiting subsection (1), any written direction may be issued with respect to —
- (a) the standards to be maintained by the person concerned in the conduct of and in respect of the risk management of the person's business;
  - (b) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and

- (c) the qualifications, experience and training of representatives,

and the person to whom such direction is issued must comply with the direction.

[4/2017]

(3) Any person who contravenes any of the directions issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part of a day during which the offence continues after conviction.

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

### **Power of Authority to make prohibition orders**

**101A.**—(1) The Authority may, by written notice, make a prohibition order against a relevant person if —

- (a) the Authority suspends or revokes the capital markets services licence held by the person;
- (b) where the person is exempt from the requirement to hold a capital markets services licence under section 99(1)(a), (b), (c) or (d), the Authority has reason to believe that circumstances exist under which, if the person were a holder of a capital markets services licence, there would exist a ground on which the Authority may suspend or revoke its licence under section 95;
- (c) the Authority suspends or revokes the status of that person as an appointed, provisional or temporary representative;
- (ca) where the relevant person is or was a representative of an exempt person but is not exempted under section 99B(2) from section 99B(1), the Authority has reason to believe that circumstances exist under which, if the relevant person were an appointed, provisional or temporary representative, there would exist a ground on which the Authority may revoke under section 99M the relevant

person's status as an appointed, provisional or temporary representative;

- (cb) where the relevant person is or was a representative of a holder of a capital markets services licence but is not exempted under section 99B(2) from section 99B(1), the Authority has reason to believe that circumstances exist under which there would exist a ground on which the Authority may revoke under section 99M the relevant person's status as an appointed, provisional or temporary representative;
- (cc) where the relevant person is or was a representative of an exempt person, or a representative of a holder of a capital markets services licence, and is exempted under section 99B(2) from section 99B(1), the Authority has reason to believe that circumstances exist under which, if the person were an appointed representative, there would exist a ground on which the Authority may revoke under section 99M the relevant person's status as an appointed representative;
- (d) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened —
  - (i) any provision in this Act;
  - (ii) any condition or restriction imposed by the Authority under this Act; or
  - (iii) any written direction issued by the Authority under this Act;
- (e) the person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that the person acted fraudulently or dishonestly;
- (f) the person has an order for the payment of a civil penalty made against the person by a court under Part 12 or has entered into an agreement with the Authority to pay a civil penalty under that Part;



- (g) the person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory relating to any regulated activity carried out by that person; or
- (h) the person has been removed at the direction of the Authority from office or employment as an officer of the holder of a capital markets services licence under section 97(1A).

[2/2009; 34/2012]

(2) In subsection (1), “relevant person” means —

- (a) the holder of a capital markets services licence or a person who was previously such a holder;
- (b) a person that is exempt from the requirement to hold a capital markets services licence under section 99(1) or a person who was previously so exempt;
- (c) a representative of a person exempt from the requirement to hold a capital markets services licence under section 99(1) or a person who was previously such a representative;
- (d) an appointed, provisional or temporary representative or a person who was previously such a representative;
- (da) a representative exempted under section 99B(2) from section 99B(1), or a person who was previously such a representative;
- (e) an officer of the holder of a capital markets services licence or a person that is exempt from the requirement to hold a capital markets services licence under section 99(1), or a person who was previously such an officer; or
- (f) a person who has been convicted of an offence under section 82(1) or 99B(1).

[2/2009; 34/2012]

(3) A prohibition order made under subsection (1) may do one or both of the following:

- (a) prohibit the person, whether permanently or for a specified period, from —
- (i) performing any regulated activity, or performing such regulated activity in specified circumstances or capacities; or
  - (ii) taking part, directly or indirectly, in the management of, acting as a director of, or becoming a substantial shareholder of —
    - (A) a holder of a capital markets services licence; or
    - (B) an exempt person;
- (b) include a provision allowing the person, subject to any condition specified in the order —
- (i) to do specified acts; or
  - (ii) to do specified acts in specified circumstances, that the order would otherwise prohibit the person from doing.

[2/2009]

(4) The Authority must not make a prohibition order against a person without giving the person an opportunity to be heard.

[2/2009]

(5) Any person who is aggrieved by the decision of the Authority to make a prohibition order against the person may, within 30 days of the decision, appeal in writing to the Minister.

[2/2009]

(6) Where the Authority makes a prohibition order against any person who is an appointed, provisional or temporary representative, it must indicate against his or her name in the public register of representatives that fact, and the indication must remain in the register for the duration of the order.

[2/2009]

(7) The Authority must keep, in such form as it thinks fit, records on persons against whom prohibition orders are made under this section.

[34/2012]

(8) The Authority may publish the records referred to in subsection (7), or any part of them, in such manner as the Authority considers appropriate.

[34/2012]

### **Effect of prohibition orders**

**101B.**—(1) A person against whom a prohibition order is made must comply with the prohibition order.

[2/2009]

(2) Where a prohibition order is made against a person and notified to the holder of a capital markets services licence or an exempt person, the holder or exempt person must not employ the firstmentioned person to carry out any regulated activity or use the firstmentioned person's service, to the extent that this is prohibited by the order.

[2/2009]

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both.

[2/2009]

(4) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

[2/2009]

(5) The holder of a capital markets services licence or an exempt person against whom a prohibition order has been issued prohibiting it from carrying on any regulated activity must immediately inform all its representatives who perform the regulated activity, by written notice of such prohibition order, and the representatives who are so informed must cease to perform such regulated activity during the period specified in the prohibition order.

[2/2009]

(6) Any person who contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not

exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

### **Variation or revocation of prohibition orders**

**101C.**—(1) The Authority may vary or revoke a prohibition order, by giving written notice to the person against whom the order was made, if the Authority is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Authority made the order.

[2/2009]

(2) The Authority may vary or revoke a prohibition order under subsection (1) —

- (a) on its own initiative; or
- (b) if the person against whom the order was made lodges with the Authority an application for the Authority to do so, accompanied by such document and fee as may be prescribed.

[2/2009]

(3) The Authority must not vary a prohibition order made against a person under subsection (2)(a) without giving the person an opportunity to be heard.

[2/2009]

(4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against the person under subsection (2)(a) may, within 30 days of the decision, appeal in writing to the Minister.

[2/2009]

### **Date and effect of prohibition orders**

**101D.**—(1) A prohibition order, or any variation or revocation of a prohibition order, takes effect on the date specified in the order by the Authority.

[2/2009]

- (2) A prohibition order does not operate so as to —
- (a) avoid or affect any agreement, transaction or arrangement entered into by the person against whom the order is made, whether the agreement, transaction or arrangement was entered into before, on or after the issue of the prohibition order; or
  - (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[2/2009]

## PART 5

### BOOKS, CUSTOMER ASSETS AND AUDIT

#### *Division 1 — Books*

#### **Keeping of books and providing of returns**

**102.**—(1) A holder of a capital markets services licence must —

- (a) keep, or cause to be kept, such books as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and
- (b) keep, or cause to be kept, such books in such a manner as will enable them to be conveniently and properly audited.

(2) An entry in the books of a holder of a capital markets services licence required to be kept in accordance with this section is deemed to have been made by, or with the authority of, the holder.

(3) A holder of a capital markets services licence must retain such books as may be required to be kept under this Act for a period of not less than 5 years.

[2/2007]

(4) A holder of a capital markets services licence must —

- (a) furnish such returns and records in such form and manner as may be prescribed or as may be notified by the Authority in writing; and

- (b) provide such information relating to its business as the Authority may require.

(5) The Authority may, without affecting section 341, make regulations in respect of all or any of the matters in this Division, including the keeping of such books, by a holder of a capital markets services licence, in such form and manner as the Authority may prescribe.

### **Penalties under this Division**

**103.** A holder of a capital markets services licence which, without reasonable excuse, contravenes section 102(1), (3) or (4) or any regulation made under section 102(5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

## *Division 2 — Customer Assets*

### **Interpretation of this Division**

**103A.** In this Division, unless the context otherwise requires, “money or other assets” means money received or retained by, or any other asset deposited with, a holder of a capital markets services licence in the course of its business for which it is liable to account to its customer, and any money or other assets accruing therefrom.

### **Handling of customer assets**

**104.—(1)** A holder of a capital markets services licence must, to the extent that it receives money or other assets from or on account of a customer —

- (a) do so, except in such circumstances as the Authority may prescribe, on the basis that the money or other assets must be applied solely for such purpose as may be agreed to by the customer, when or before it receives the money or other assets;

- (b) pending such application, pay or deposit the money or other assets in such manner as may be prescribed; and
- (c) record and maintain a separate book entry for each customer in accordance with the provisions of this Act in relation to that customer's money or other assets.

[34/2012]

(2) The Authority may, without affecting section 341, make regulations in respect of all or any of the matters in this Division, including the handling of money or other assets by a holder of a capital markets services licence.

### **Non-availability of customer money and other assets for payment of debt**

**104A.** Except as otherwise provided in this Part or the regulations made thereunder, all money or other assets received from or on account of customers or deposited in the manner prescribed under section 104(1)(b) —

- (a) are not available for payment of the debts of the holder of a capital markets services licence; and
- (b) are not liable to be paid or taken in execution under an order or a process of any court.

### **Penalties under this Division**

**105.** Any holder of a capital markets services licence which, without reasonable excuse, contravenes section 104(1) or any regulation made under section 104(2), shall be guilty of an offence and shall be liable on conviction —

- (a) where it is found to have committed the offence with intent to defraud, to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

*Division 3 — Audit***Appointment of auditors**

**106.** A holder of a capital markets services licence must appoint an auditor to audit its accounts and where, for any reason, the auditor ceases to act for such holder, the holder must, as soon as practicable thereafter, appoint another auditor.

**Lodgment of annual accounts, etc.**

**107.—(1)** A holder of a capital markets services licence must, in respect of each financial year —

- (a) prepare a true and fair profit and loss account and a balance sheet made up to the last day of the financial year; and
- (b) lodge that account and balance sheet with the Authority within 5 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 account and balance sheet.

(2) Where an application for an extension of the period of 5 months specified in subsection (1) has been made by a holder of a capital markets services licence to the Authority and the Authority is satisfied that there is any special reason for requiring the extension, the Authority may extend that period by not more than 4 months, subject to such conditions or restrictions as the Authority thinks fit to impose.

(3) Any holder of a capital markets services licence which contravenes subsection (1), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 for every day or part of a day that the lodgment is late, subject to a maximum fine of \$50,000.

(4) Any holder of a capital markets services licence which contravenes any condition imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(5) Despite any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of duties



by an auditor appointed by a holder of a capital markets services licence —

- (a) at any time direct the holder to remove the auditor; and
- (b) direct the holder, as soon as practicable thereafter, to appoint another auditor,

and the holder must comply with such direction.

### **Reports by auditor to Authority in certain cases**

**108.** Where, in the performance of his or her duties as an auditor for a holder of a capital markets services licence, an auditor becomes aware of —

- (a) any matter which, in his or her opinion, adversely affects or may adversely affect the financial position of the holder to a material extent;
- (b) any matter which, in his or her opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts, including any irregularity that may affect or jeopardise the moneys or other assets of any customer of the holder,

the auditor must immediately thereafter send —

- (d) a report in writing of the matter or irregularity to the Authority; and
- (e) where the holder is a member of an approved exchange, a copy of the report to the approved exchange.

[4/2017]

### **Power of Authority to appoint auditor**

**109.**—(1) Where —

- (a) a holder of a capital markets services licence fails to lodge an auditor's report under section 107; or

(b) the Authority receives a report under section 108, the Authority may, without affecting its powers under section 115, if it is satisfied that it is in the interests of the holder, the customers of the holder 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 of the holder.

(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 holder of a capital markets services licence, the Authority may, in writing, direct the holder to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a holder of a capital markets services licence fails to comply with a direction under subsection (2), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

(4) An auditor appointed under subsection (1) must, on the conclusion of the examination and audit, submit a report to the Authority.

### **Power of auditors appointed by Authority**

**110.**—(1) An auditor appointed by the Authority under section 109 may, for the purpose of carrying out an examination and audit of the books of a holder of a capital markets services licence —

- (a) examine, on oath or affirmation, any officer, employee or agent of the holder or any other auditor appointed under this Act in relation to those books;
- (b) require any officer, employee or agent of the holder, or any other auditor appointed under this Act, to produce any of the books held by or on behalf of the holder relating to its business, and to make copies of or take extracts from, or retain possession of, such books for such period as is necessary to enable them to be inspected;

- (c) require any approved exchange, licensed trade repository, approved clearing house or recognised clearing house to produce any of the books kept by it, or any information in its possession, relating to the business of the holder;
- (d) employ such persons as he or she considers necessary to assist him or her in carrying out the examination and audit; and
- (e) authorise in writing any person employed by him or her to do, in relation to the examination and audit, any act or thing that he or she could do as an auditor under this subsection, other than the examination of any person on oath or affirmation.

[34/2012; 4/2017]

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to the person, or fails to comply with any request made to the person, by an auditor appointed under section 109 or a person authorised under subsection (1)(e), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

### **Offence to destroy, conceal, alter, etc., books**

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

- (a) destroys, conceals or alters any book relating to the business of a holder of a capital markets services licence; or
- (b) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging to, in the possession of or under the control of a holder of a capital markets services licence,

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 2 years or to both.

(2) If, in any proceedings for an offence under subsection (1), it is proved that the person charged with the offence —

- (a) destroyed, concealed or altered any book referred to in subsection (1)(a); or
- (b) sent, or conspired to send, out of Singapore, any book or asset referred to in subsection (1)(b),

the onus of proving that, in so doing, the person did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Division lies on that person.

### **Safeguarding of books**

**112.**—(1) A holder of a capital markets services licence must take reasonable precautions —

- (a) to prevent falsification of the books required to be kept by it under this Act; and
- (b) to facilitate the discovery of any falsification of any such book.

(2) Any holder of a capital markets services licence who contravenes this section shall be guilty of an offence under this Act.

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

**113.** Except as may be necessary for the carrying into effect of 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 109 or carrying out any duty imposed under section 115, and any employee of such an auditor, must not disclose any information which may come to his or her knowledge or possession in the course of performing his or her duties as such auditor or employee (as the case may be) to any person other than —

- (a) the Authority; and
- (b) in the case of an employee of such auditor, the auditor.

**Exchanges, etc., may impose additional obligations on members**

**114.** Nothing in this Division prevents any approved exchange, licensed trade repository, approved clearing house or recognised clearing house from imposing on its members any additional obligation or requirement which it thinks is necessary with respect to —

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

[34/2012; 4/2017]

**Additional powers of Authority in respect of auditors**

**115.—(1)** The Authority may impose all or any of the following duties on an auditor of a holder of a capital markets services licence:

- (a) a duty to submit to the Authority such additional information in relation to his or her audit as the Authority considers necessary;
- (b) a duty to enlarge or extend the scope of his or her audit of the business and affairs of the holder;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report to the Authority on any of the matters referred to in paragraphs (b) and (c),

and the auditor must carry out such additional duty or duties.

(2) A holder of a capital markets services licence must remunerate the auditor in respect of the discharge of such additional duty or duties as the Authority may impose under subsection (1).

**Defamation**

**116.—(1)** No auditor or employee of such auditor shall, in the absence of malice on his or her 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 or her duties under this Part; or
  - (b) the submission of any report to the Authority under section 108, 109(4) or 115(1)(d).
- (2) Subsection (1) does not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his or her employee has as a defendant in an action for defamation.

## PART 6

### CONDUCT OF BUSINESS

#### *Division 1 — General*

117. [*Repealed by Act 2 of 2009*]

118. [*Repealed by Act 2 of 2009*]

119. [*Repealed by Act 1 of 2005*]

120. [*Repealed by Act 2 of 2009*]

121. [*Repealed by Act 1 of 2005*]

122. [*Repealed by Act 2 of 2009*]

#### **Power of Authority to make regulations**

123.—(1) The Authority may make regulations in respect of the conduct of business in any regulated activity by the holder of a capital markets services licence or a representative of such a holder.

(2) Without limiting subsection (1), regulations made under this section may —

- (a) specify requirements applicable to the holder of a capital markets services licence in relation to product financing;
- (aa) specify, in the context of the granting of an unsecured advance, unsecured loan or unsecured credit facility by the holder of a capital markets services licence —
  - (i) what constitutes any such unsecured advance, unsecured loan or unsecured credit facility; and

- (ii) the requirements and restrictions relating to any such grant;
- (b) prohibit the making of direct or indirect representations, expressly or by implication, relating to specified matters, or the use of misleading or deceptive advertisements by or on behalf of the holder, and impose conditions or restrictions for the use of advertisements by or on behalf of the holder;
- (ba) require contract notes to be issued by or on behalf of the holder of a capital markets services licence, and specify the information to be provided in the contract notes;
- (c) specify terms and conditions to be included in customer contracts and provide that the terms and conditions are, unless the Authority in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the customer contracts in which they are included, whether or not a different intention appears in the provisions of the customer contracts;
- (d) specify information that the holder of a capital markets services licence is to provide to its customer on entering into a customer contract with the customer, and thereafter on request by the customer, concerning the business of the holder and the identity and status of any person acting on behalf of the holder with whom the customer may have contact;
- (e) require the holder of a capital markets services licence, and a representative of such a holder, to ascertain, in relation to each customer of the holder, specified matters relating to the customer's identity and the customer's financial situation, investment experience and investment objectives relevant to the services to be provided by the holder, and specify the steps to be taken for this purpose;
- (f) require the holder of a capital markets services licence, and a representative of such a holder, when providing information or advice concerning capital markets products to a customer of the holder, to ensure the

suitability of the information or advice to be provided to the customer, and specify the steps to be taken for this purpose;

- (g) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder the financial risks in relation to capital markets products that the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;
- (ga) require the holder of a capital markets services licence, and a representative of such a holder to take specified steps to ensure that a customer or prospective customer of the holder is apprised of the financial risks in relation to trades carried out by means of any trading account, before opening such account for the customer or prospective customer or soliciting or entering into an agreement with the customer or prospective customer to manage or guide such account;
- (h) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder any commission or advantage the holder or the representative (as the case may be) receives or is to receive from a third party in connection with any capital markets products which the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;
- (i) specify the circumstances in which, and the conditions and restrictions under which, the holder of a capital markets services licence, and a representative of such a holder, may enter into or effect a transaction, and provide for matters relating thereto including the right of the other party to the contract in question to rescind it where a regulation made under this paragraph is contravened;
- (ia) require the holder of a capital markets services licence to comply with prescribed requirements concerning the sale of, or the making of recommendations with respect to,



capital markets products which the holder has subscribed for or purchased, or may be required to subscribe for or purchase, under an underwriting or sub-underwriting agreement;

- (j) specify the circumstances in which, and the conditions under which, the holder of a capital markets services licence, and a representative of such a holder, may use information relating to the affairs of the customer of the holder;
- (k) require the holder of a capital markets services licence, and a representative of such a holder, to take steps to avoid cases of conflict between any of their interests and those of a customer of the holder, and specify the steps to be taken in the event of a potential or actual case of conflict;
- (l) specify the circumstances in which the holder of a capital markets services licence may receive any property or service from another holder of a capital markets services licence in consideration of directing business to that other holder;
- (m) specify the circumstances in which, and the conditions and restrictions under which, a representative of the holder of a capital markets services licence is permitted to deal or trade for the representative's own account in capital markets products;
- (n) provide for any other matter relating to the practices and standards of conduct of the holder of a capital markets services licence and a representative of such a holder in carrying on business in any regulated activity; and
- (o) provide that, subject to such conditions or restrictions as may be prescribed, all or specified provisions of this Part do not apply to a specified class of holders of a capital markets services licences or their representatives, or to a specified class of capital markets products.

*[2/2009; 34/2012; 4/2017]*

(3) Regulations made under this section may provide that any customer contract entered into by the holder of a capital markets

services licence with its customer otherwise than in compliance with any specified regulation is, despite anything in the contract, unenforceable at the option of the customer.

(4) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for penalties not exceeding a fine of \$100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

(5) In this section, “customer contract” means any contract or arrangement between the holder of a capital markets services licence and a customer of the holder which contains terms on which the holder is to provide services to, or effect transactions for, the customer.

## PART 6AA

### FINANCIAL BENCHMARKS

#### **Objectives of this Part**

**123A.** The objectives of this Part are —

- (a) to promote fair and transparent determination of financial benchmarks; and
- (b) to reduce systemic risks.

[4/2017]

#### *Division 1 — Designation of Financial Benchmarks*

#### **Power of Authority to designate financial benchmarks**

**123B.** The Authority may, by order in the *Gazette*, designate a financial benchmark as a designated benchmark for the purposes of this Part if the Authority is satisfied that —

- (a) the financial benchmark has systemic importance in the financial system of Singapore;
- (b) a disruption in the determination of the financial benchmark could affect public confidence in the financial benchmark or the financial system of Singapore;
- (c) the determination of the financial benchmark could be susceptible to manipulation; or
- (d) it is otherwise in the interests of the public to do so.

[4/2017]

### **Withdrawal of designation of financial benchmark**

**123C.** The Authority may, by order in the *Gazette*, withdraw the designation of any designated benchmark if the Authority is of the opinion that the considerations in section 123B are no longer valid or satisfied.

[4/2017]

#### *Division 2 — Benchmark Administrators of Designated Benchmarks*

##### *Subdivision (1) — Authorised benchmark administrator*

### **Requirement for authorisation**

**123D.**—(1) No person may carry on, or hold out that the person is carrying on, a business of administering a designated benchmark, unless the person is an authorised benchmark administrator.

[4/2017]

(2) No person may hold out that the person is an authorised benchmark administrator, unless the person is an authorised benchmark administrator.

[4/2017]

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) Any person who contravenes subsection (2) 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 not exceeding \$2,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Application for authorisation**

**123E.**—(1) A corporation may apply to the Authority to be authorised as an authorised benchmark administrator.

[4/2017]

(2) An application made under subsection (1) must be —

- (a) made in such form and manner as the Authority may specify; and
- (b) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 123ZZA, which must be paid in the manner specified by the Authority.

[4/2017]

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

[4/2017]

### **Power of Authority to authorise benchmark administrators**

**123F.**—(1) Where a corporation mentioned in section 123E(1) makes an application under that provision, the Authority may authorise the corporation as an authorised benchmark administrator.

[4/2017]

(2) The Authority may authorise a corporation as an authorised benchmark administrator under subsection (1) subject to such conditions or restrictions as the Authority may impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to —

- (a) the process for the determination of the designated benchmark; or

(b) any other activities that the corporation may undertake.

[4/2017]

(3) The Authority may, at any time, by written notice to the authorised benchmark administrator, vary any condition or restriction or impose any further condition or restriction.

[4/2017]

(4) An authorised benchmark administrator must, for the duration of the authorisation, satisfy every condition or restriction that may be imposed on it under subsections (2) and (3).

[4/2017]

(5) The Authority must not authorise a corporation as an authorised benchmark administrator, unless the corporation meets such requirements as the Authority may prescribe by regulations made under section 123ZZA, either generally or specifically.

[4/2017]

(6) The Authority may refuse to authorise a corporation as an authorised benchmark administrator, if —

(a) the corporation has not provided the Authority with such information, as the Authority may require, relating to —

(i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business or operations; and

(ii) any circumstances likely to affect the corporation's manner of conducting business or operations;

(b) any information or document provided by the corporation to the Authority is false or misleading;

(c) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(d) execution against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;

(e) a receiver, a receiver and manager, judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in

respect of, any property of the corporation or a substantial shareholder of the corporation;

- (f) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or substantial shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;
- (g) the corporation, a substantial shareholder of the corporation or any officer of the corporation —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or
  - (ii) has been convicted of an offence under this Act committed before, on or after 8 October 2018;
- (h) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the activity of administering a designated benchmark;
- (i) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (j) the Authority has reason to believe that the corporation may not be able to act in the best interests of a class, or the classes, of users of the designated benchmark, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;

- (k) the Authority is not satisfied as to —
  - (i) the financial standing of the corporation or any of its substantial shareholders; or
  - (ii) the manner in which the business of the corporation is to be conducted, or the operations of the corporation are to be conducted, in relation to administering a designated benchmark;
- (l) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with administering a designated benchmark;
- (m) there are other circumstances which are likely to —
  - (i) lead to improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or
  - (ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;
- (n) the Authority has reason to believe that the corporation, or any of its officers or employees, will not perform the activity of administering a designated benchmark, efficiently, honestly or fairly;
- (o) the Authority is of the opinion that it would be contrary to the interests of the public to authorise the corporation as an authorised benchmark administrator; or
- (p) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(7) Subject to subsection (8), the Authority must not refuse to authorise a corporation as an authorised benchmark administrator under subsection (6) without giving the corporation an opportunity to be heard.

[4/2017]

(8) The Authority may refuse to authorise a corporation as an authorised benchmark administrator on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that the corporation had acted fraudulently or dishonestly;
- (d) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(9) The Authority must give notice in the *Gazette* of any authorisation under subsection (1).

[4/2017]

(10) Any corporation that is aggrieved by a refusal of the Authority to grant an authorisation under subsection (1) may, within 30 days after the corporation is notified of the refusal, appeal to the Minister, whose decision is final.

[4/2017]

(11) Any authorised benchmark administrator who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]



**Deposit to be lodged by corporation or authorised benchmark administrator**

**123G.**—(1) The Authority may require the corporation mentioned in section 123E(1) that has made an application under that provision to lodge with the Authority, at the time of its application and in such manner as the Authority may determine, a deposit of such amount as the Authority may prescribe by regulations made under section 123ZZA in respect of that authorisation and in such form as the Authority may specify.

[4/2017]

(2) The Authority may prescribe by regulations made under section 123ZZA the circumstances and purposes for the use of the deposit.

[4/2017]

**False statements in relation to application for authorisation**

**123H.** Any person who, in connection with an application for authorisation as an authorised benchmark administrator —

- (a) without reasonable excuse, makes a statement which is false or misleading in a material particular; or
- (b) without reasonable excuse, 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 \$50,000.

[4/2017]

**Annual fees payable by authorised benchmark administrator**

**123I.**—(1) Every authorised benchmark administrator must pay to the Authority such annual fee as may be prescribed by regulations made under section 123ZZA, in such manner as the Authority may specify.

[4/2017]

(2) Subject to subsection (3), the Authority may, where it considers appropriate, refund or remit the whole or part of any annual fee paid to it.

[4/2017]

- (3) The Authority need not refund any annual fee paid if —
- (a) the authorisation is revoked, suspended or withdrawn during the period to which the annual fee relates;
  - (b) the authorised benchmark administrator ceases to carry on a business of administering a designated benchmark during the period to which the annual fee relates; or
  - (c) a prohibition order has been made against the authorised benchmark administrator under section 123ZZC.

[4/2017]

(4) Where an authorised benchmark administrator fails to pay the annual fee by the date on which such fee is due, the Authority may impose a late payment fee of an amount prescribed by regulations made under section 123ZZA for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[4/2017]

### **Revocation, suspension or withdrawal of authorisation**

**123J.**—(1) The Authority may revoke the authorisation of a corporation as an authorised benchmark administrator under section 123F(1) if —

- (a) there exists a ground on which the Authority must refuse an application under section 123F(5) or may refuse an application under section 123F(6);
- (b) the corporation does not commence carrying out the activity of administering a designated benchmark within 12 months starting on the date on which it was granted the authorisation under section 123F(1);
- (c) the corporation ceases to carry on a business of administering a designated benchmark in respect of a particular designated benchmark, or where it administers more than one designated benchmark, in respect of all of its designated benchmarks;
- (d) where the corporation carries on a business of administering a designated benchmark only in respect of

one designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;

- (e) the Authority has reason to believe that the corporation has not acted in the best interests of the users of the designated benchmark or any class of users of the designated benchmark;
- (f) the Authority has reason to believe that the corporation, or any of its officers or employees, has not performed its or their duties efficiently, honestly or fairly;
- (g) the corporation has contravened any condition or restriction applicable in respect of its authorisation, any written direction issued to it by the Authority under this Act, or any provision of this Act;
- (h) it appears to the Authority that the corporation has failed to satisfy any of its obligations in compliance with, under or arising from —
  - (i) this Act; or
  - (ii) any written direction issued by the Authority under this Act;
- (i) the Authority has reason to believe that the corporation is carrying out the activity of administering a designated benchmark in a manner that is contrary to the interests of the public;
- (j) the corporation has provided any information or document to the Authority that is false or misleading;
- (k) the corporation fails to pay the annual fee mentioned in section 123I in the manner specified by the Authority; or
- (l) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(2) The Authority may —

- (a) suspend the authorisation granted to an authorised benchmark administrator for a specific period instead of revoking it under subsection (1); and
- (b) at any time extend or revoke the suspension.

[4/2017]

(3) Subject to subsection (4), the Authority may, upon a written application made to it by an authorised benchmark administrator, in such form and manner as the Authority may specify, withdraw the authorisation of the authorised benchmark administrator.

[4/2017]

(4) The Authority may refuse to withdraw the authorisation of an authorised benchmark administrator under subsection (3) where the Authority is of the opinion that —

- (a) there is any matter concerning the corporation which should be investigated before the authorisation is withdrawn; or
- (b) the withdrawal of the authorisation would not be in the public interest.

[4/2017]

(5) Subject to subsection (6), the Authority must not —

- (a) revoke the authorisation granted to an authorised benchmark administrator under subsection (1);
- (b) suspend the authorisation granted to an authorised benchmark administrator under subsection (2); or
- (c) refuse the withdrawal of the authorisation granted to an authorised benchmark administrator under subsection (4),

without giving the authorised benchmark administrator an opportunity to be heard.

[4/2017]

(6) The Authority may revoke or suspend the authorisation of a corporation as an authorised benchmark administrator without giving the corporation an opportunity to be heard on any of the following grounds:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that the corporation had acted fraudulently or dishonestly;
- (d) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;
- (e) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(7) Any corporation that is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1), (2) or (4) may, within 30 days after the corporation is notified of the decision, appeal to the Minister, whose decision is final.

[4/2017]

(8) Despite the lodging of an appeal under subsection (7), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(10) Any revocation, suspension or withdrawal of the authorisation of a corporation as an authorised benchmark administrator does not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation, suspension or withdrawal of the authorisation; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[4/2017]

(11) The Authority must give notice in the *Gazette* of any revocation of authorisation under subsection (1), suspension of authorisation under subsection (2)(a), extension or revocation of suspension of authorisation under subsection (2)(b) or withdrawal of authorisation under subsection (3).

[4/2017]

*Subdivision (2) — Exempt benchmark administrator*

**Power of Authority to exempt corporations from authorisation**

**123K.**—(1) The Authority may —

- (a) despite section 337(1), by regulations made under section 123ZZA exempt any corporation or class of corporations; or
- (b) on the application of any corporation, by written notice, exempt the corporation,

from the requirement under section 123D(1) to be an authorised benchmark administrator.

[4/2017]

(2) The Authority may require a corporation to provide it with such information or documents as the Authority considers necessary in relation to an application made under subsection (1)(b).

[4/2017]

(3) The Authority may by regulations, or by written notice, impose any conditions or restrictions on an exempt benchmark administrator in relation to its carrying out the activity of administering a designated benchmark or any related matter, including conditions or restrictions relating to —

(a) the process for the determination of the designated benchmark; or

(b) any other activities that the corporation may undertake.

[4/2017]

(4) The Authority may, at any time, by written notice to an exempt benchmark administrator under subsection (1)(b), vary any condition or restriction mentioned in subsection (3) or impose any further condition or restriction relating to the exemption.

[4/2017]

(5) The Authority must give notice in the *Gazette* of any exemption under subsection (1)(b).

[4/2017]

(6) An exempt benchmark administrator must comply with such conditions or restrictions imposed on it under subsection (3) or (4).

[4/2017]

(7) Any exempt benchmark administrator who contravenes any condition or restriction imposed under subsection (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **False statements in relation to application for exemption**

**123L.** Any person who, in connection with an application for exemption under section 123K(1)(b) —

(a) without reasonable excuse, makes a statement which is false or misleading in a material particular; or

- (b) without reasonable excuse, 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 \$50,000.

[4/2017]

### **Annual fees payable by exempt benchmark administrator**

**123M.**—(1) Every exempt benchmark administrator must pay to the Authority such annual fee as may be prescribed by regulations made under section 123ZZA, in such manner as the Authority may specify.

[4/2017]

(2) Subject to subsection (3), the Authority may, where it considers appropriate, refund or remit the whole or part of any annual fee paid to it.

[4/2017]

(3) The Authority need not refund any annual fee paid if —

- (a) the exemption is revoked during the period in which the annual fee relates;
- (b) the exempt benchmark administrator ceases to carry on a business of administering a designated benchmark during the period to which the annual fee relates; or
- (c) a prohibition order has been made against the exempt benchmark administrator under section 123ZZC.

[4/2017]

(4) Where an exempt benchmark administrator fails to pay the annual fee by the date on which such fee is due, the Authority may impose a late payment fee of an amount prescribed by regulations made under section 123ZZA for every day or part of a day that the payment is late and both fees are recoverable by the Authority as a judgment debt.

[4/2017]



**Power to revoke exemption**

**123N.**—(1) The Authority may revoke any exemption granted to a corporation under section 123K(1) if —

- (a) the corporation does not commence carrying on a business of administering a designated benchmark in respect of a particular designated benchmark or, where it administers more than one designated benchmark, all of its designated benchmarks, within 12 months starting on the date on which it was granted the exemption;
- (b) the corporation ceases to carry on a business of administering a designated benchmark or, where it administers more than one designated benchmark, all of its designated benchmarks;
- (c) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;
- (d) the corporation contravenes any condition or restriction relating to the exemption, any direction issued to it by the Authority under this Act, or any provision of this Act;
- (e) the Authority is of the opinion that the corporation has carried out the activity of administering a designated benchmark in a manner that is contrary to the interests of a class, or classes, of users of a designated benchmark, or the interests of the public;
- (f) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (g) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (h) the corporation has been convicted, whether in Singapore or elsewhere, of an offence, involving fraud or dishonesty,

or the conviction for which involved a finding that the corporation had acted fraudulently or dishonestly;

- (i) the corporation has provided any information or document to the Authority that is false or misleading;
- (j) the corporation fails to pay the annual fee mentioned in section 123M; or
- (k) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(2) Subject to subsection (3), the Authority must not revoke any exemption granted to a corporation under subsection (1) without giving the corporation an opportunity to be heard.

[4/2017]

(3) The Authority may revoke an exemption granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect, of any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that the corporation had acted fraudulently or dishonestly;
- (d) where the corporation carries on a business of administering a designated benchmark only in respect of one designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;

- (e) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(4) Any corporation that is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision is final.

[4/2017]

(5) Despite the lodging of an appeal under subsection (4), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(6) The Minister may, when deciding an appeal under subsection (4), make such modification as he or she considers necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

(7) Any revocation of an exemption granted to any corporation does not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into by the corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the exemption; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[4/2017]

(8) The Authority must give notice in the *Gazette* of any revocation of an exemption mentioned in subsection (1).

[4/2017]

*Subdivision (3) — Code on designated benchmark***Code on designated benchmark**

**123O.**—(1) For the effective administration and control of designated benchmarks, every authorised benchmark administrator and exempt benchmark administrator must —

- (a) prepare and issue (in the manner specified by the Authority) a code in respect of each designated benchmark in respect of which it carries on a business of administering a designated benchmark (called in this Act a code on designated benchmark) that —
  - (i) sets out the standards to be maintained by every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter, in relation to that designated benchmark; and
  - (ii) complies with subsection (2); and
- (b) obtain the Authority’s written approval for the code on designated benchmark before that code on designated benchmark is issued.

[4/2017]

(2) A code on designated benchmark must deal with such matters as may be prescribed by regulations made under section 123ZZA or as may be specified by written notice to the authorised benchmark administrator or exempt benchmark administrator.

[4/2017]

(3) Every authorised benchmark administrator and exempt benchmark administrator must not amend a code on designated benchmark unless the authorised benchmark administrator and exempt benchmark administrator (as the case may be) —

- (a) complies with such requirements as may be prescribed by regulations made under section 123ZZA;
- (b) complies with such conditions or restrictions which the Authority may by written notice impose; and
- (c) obtains the Authority’s written approval to do so.

[4/2017]

(4) In this section, the reference to an amendment to a code on designated benchmark is to be construed as a reference to a change to any of the following:

- (a) the scope of the code on designated benchmark;
- (b) any requirement, obligation or restriction under the code on designated benchmark,

whether the change is made by an alteration to the text of the code on designated benchmark, or by any other notice issued by or on behalf of the authorised benchmark administrator or exempt benchmark administrator (as the case may be) modifying the meaning or interpretation of the code on designated benchmark.

[4/2017]

(5) Every authorised benchmark administrator and exempt benchmark administrator must, in respect of each code on designated benchmark that it issues —

- (a) ensure that the code on designated benchmark takes into account the practices and developments in the market; and
- (b) enforce compliance with the code on designated benchmark.

[4/2017]

(6) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must, in respect of its business or activity of providing information in relation to a designated benchmark, comply with the code on designated benchmark issued by the authorised benchmark administrator or exempt benchmark administrator, as the case may be.

[4/2017]

(7) Without affecting section 123ZL, every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must have systems and controls in place to ensure compliance with each code on designated benchmark that it is required to comply with under subsection (6).

[4/2017]

(8) Any authorised benchmark administrator or exempt benchmark administrator which contravenes subsection (1), (2), (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(9) Any authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter which contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(10) Despite subsection (6), a failure of any authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter to comply with a code on designated benchmark does not of itself render that authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) liable to criminal proceedings but any such failure may be relied upon by any party in any proceedings (whether civil or criminal) as tending to establish or negate any liability which is in question in those proceedings.

[4/2017]

*Subdivision (4) — Obligations of authorised benchmark administrators and exempt benchmark administrators*

**General obligations**

**123P.**—(1) Every authorised benchmark administrator and exempt benchmark administrator must, for every designated benchmark in respect of which it carries on a business of administering a designated benchmark —

- (a) manage any risks associated with its business and operations prudently;
- (b) ensure that the systems and controls concerning its performing the activity of administering a designated benchmark are adequate and appropriate for the scale and nature of its operations;

- (c) have sufficient financial, human and system resources —
  - (i) to carry on a business of administering a designated benchmark; and
  - (ii) to meet contingencies or disasters;
- (d) maintain governance arrangements that are adequate for the designated benchmark to be determined in a fair and efficient manner; and
- (e) ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

(2) In subsection (1)(c), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[4/2017]

### **Obligation to notify Authority of certain matters**

**123Q.**—(1) Every authorised benchmark administrator and exempt benchmark administrator must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) any material change to the information provided by the authorised benchmark administrator or the exempt benchmark administrator, in its application under section 123E(1) or 123K(1)(b) respectively;
- (b) the carrying on of any business (called in this section a proscribed business) by the authorised benchmark administrator or exempt benchmark administrator (as the case may be) other than such business or such class of businesses as the Authority may prescribe by regulations made under section 123ZZA;
- (c) the acquisition by the authorised benchmark administrator or exempt benchmark administrator (as the case may be) of a substantial shareholding in a corporation (called in this section a proscribed corporation) that carries on any business other than such business or such class of

businesses as the Authority may prescribe by regulations made under section 123ZZA;

- (d) any failure of an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter (as the case may be) to comply with the code on designated benchmark of the authorised benchmark administrator or exempt benchmark administrator;
- (e) any other matter that the Authority may —
  - (i) prescribe by regulations made under section 123ZZA for the purposes of this paragraph; or
  - (ii) specify by written notice, to the authorised benchmark administrator or exempt benchmark administrator, as the case may be.

[4/2017]

(2) Without limiting section 123ZZB(1), the Authority may, at any time after receiving a notification mentioned in subsection (1), issue directions to the authorised benchmark administrator or exempt benchmark administrator (as the case may be) —

- (a) where the notice relates to a matter mentioned in subsection (1)(b) —
  - (i) to cease carrying on the proscribed business; or
  - (ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose; or
- (b) where the notice relates to a matter mentioned in subsection (1)(c) —
  - (i) to dispose all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as specified in the directions; or
  - (ii) to exercise or not to exercise its rights relating to such shareholding subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that such exercise or non-exercise of rights is in the interests of a class, or



classes, of users of a designated benchmark, or in the interests of the public or a section of the public.

[4/2017]

(3) An authorised benchmark administrator or an exempt benchmark administrator must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[4/2017]

(4) An authorised benchmark administrator or an exempt benchmark administrator must notify the Authority of any matter that the Authority may prescribe by regulations made under section 123ZZA for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(5) An authorised benchmark administrator or an exempt benchmark administrator must notify the Authority of any matter that the Authority may specify by written notice to the authorised benchmark administrator or an exempt benchmark administrator (as the case may be) no later than such time as the Authority may specify in that notice.

[4/2017]

### **Obligation to maintain proper records**

**123R.**—(1) Every authorised benchmark administrator and exempt benchmark administrator must maintain a record of the following in respect of a designated benchmark administered by it:

- (a) all information or expressions of opinion used for the purposes of determining the designated benchmark;
- (b) the manner in which the formula or other methods of calculation is applied to the information or expressions of opinion mentioned in paragraph (a) in determining the designated benchmark;
- (c) such other matters as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

(2) The record mentioned in subsection (1) must be kept for such period, and in such form and manner, as may be prescribed by regulations made under section 123ZZA.

[4/2017]

### **Obligation to submit periodic reports**

**123S.** Every authorised benchmark administrator and exempt benchmark administrator must submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

### **Notification of change of particulars**

**123T.** Where —

- (a) an authorised benchmark administrator or exempt benchmark administrator ceases to carry on a business of administering a designated benchmark; or
- (b) a change occurs in any matter records of which are required by section 123U(1) to be kept in relation to the authorised benchmark administrator or exempt benchmark administrator,

the authorised benchmark administrator or exempt benchmark administrator (as the case may be) must, not later than 14 days after the occurrence of the event, provide particulars of the event to the Authority in the form and manner prescribed by regulations made under section 123ZZA.

[4/2017]

### **Records of authorised benchmark administrators and exempt benchmark administrators**

**123U.—(1)** The Authority must keep records of every authorised benchmark administrator and exempt benchmark administrator, setting out the following information of each authorised benchmark administrator and exempt benchmark administrator:

- (a) the name of the authorised benchmark administrator or exempt benchmark administrator;

- (b) the address of the principal place at which the authorised benchmark administrator or exempt benchmark administrator carries on a business of administering a designated benchmark;
- (c) where the business is carried on under a name or style other than the name of the authorised benchmark administrator or exempt benchmark administrator (as the case may be) the name or style under which the business is carried on;
- (d) such other information as may be prescribed by regulations made under section 123ZZA.

[4/2017]

(2) The Authority may publish the information mentioned in subsection (1) or any part of that information in any form and manner.

[4/2017]

### **Obligation to assist Authority**

**123V.** Every authorised benchmark administrator and exempt benchmark administrator must provide such assistance to the Authority as the Authority may require for the performance of the functions and duties of the Authority, including —

- (a) the submission of returns; and
- (b) the provision of books and information —
  - (i) relating to the business of the authorised benchmark administrator or exempt benchmark administrator, as the case may be; or
  - (ii) in respect of a designated benchmark administered by it.

[4/2017]

### **Penalties under this Subdivision**

**123W.** Any authorised benchmark administrator or exempt benchmark administrator which contravenes section 123P, 123Q, 123R, 123S, 123T or 123V shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for

every day or part of a day during which the offence continues after conviction.

[4/2017]

*Subdivision (5) — Matters requiring approval of Authority*

**Approval of chief executive officer and director of authorised benchmark administrator**

**123X.**—(1) Subject to subsection (3), an authorised benchmark administrator must not —

- (a) appoint a person as its chief executive officer or director;  
or
- (b) change the nature of the appointment of a person as a director from one that is non-executive to one that is executive,

unless the authorised benchmark administrator has obtained the approval of the Authority.

[4/2017]

(2) Where an authorised benchmark administrator has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1)(a), the person may be re-appointed as chief executive officer or director (as the case may be) of the authorised benchmark administrator immediately upon the expiry of the earlier term without the approval of the Authority.

[4/2017]

(3) Subsection (1) does not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

- (a) does not reside in Singapore; and
- (b) is not directly responsible for its carrying out the activity of administering a designated benchmark or any part of the activity of administering a designated benchmark.

[4/2017]

(4) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified to the authorised benchmark administrator.

[4/2017]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under subsection (1) without giving the authorised benchmark administrator an opportunity to be heard.

[4/2017]

(6) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the authorised benchmark administrator an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the person;
- (c) the person has been convicted, whether in Singapore or elsewhere, of an offence —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[4/2017]

(7) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[4/2017]

(8) Without affecting the Authority's power to impose conditions or restrictions under section 123F(2), the Authority may, at any time by written notice to the authorised benchmark administrator, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

[4/2017]

(9) Any authorised benchmark administrator which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(10) Any authorised benchmark administrator which contravenes any condition imposed under subsection (8) shall be guilty of an offence.

[4/2017]

### **Removal of officer of authorised benchmark administrator**

**123Y.**—(1) Despite the provisions of any other written law —

- (a) an authorised benchmark administrator must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and
- (b) an authorised benchmark administrator that is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (c) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, being an offence —
  - (i) involving fraud or dishonesty;
  - (ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or
  - (iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him or her in respect of a judgment debt returned unsatisfied in whole or in part;

- (f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;
- (g) has had a prohibition order under section 68 of the Financial Advisers Act 2001, section 74 of the Insurance Act 1966, or section 101A or 123ZZC made against him or her that remains in force; or
- (h) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
  - (i) which is being or has been wound up by a court; or
  - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

[4/2017]

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director of an authorised benchmark administrator that is incorporated in Singapore, or an executive officer of an authorised benchmark administrator —

- (a) has wilfully contravened or wilfully caused the authorised benchmark administrator to contravene any provision of this Act;
- (b) has, without reasonable excuse, failed to secure the compliance of the authorised benchmark administrator with this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act; or
- (c) has failed to discharge any of the duties of his or her office, the Authority may, if it thinks it necessary in the interests of the public or a section of the public, or a class or classes of users of a designated benchmark, by written notice to the authorised benchmark

administrator, direct the authorised benchmark administrator to remove the director or executive officer (as the case may be) from his or her office or employment within such period as the Authority may specify in the notice, and the authorised benchmark administrator must comply with the notice.

[4/2017]

(3) Without affecting any other matter that the Authority may consider relevant, the Authority may, when determining whether a director or an executive officer of an authorised benchmark administrator has failed to discharge the duties of his or her office for the purposes of subsection (2)(c), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified to the authorised benchmark administrator.

[4/2017]

(4) The Authority must not direct an authorised benchmark administrator to remove a person from the person's office under subsection (2) without giving the authorised benchmark administrator an opportunity to be heard.

[4/2017]

(5) Where the Authority directs an authorised benchmark administrator to remove a person from the person's office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

[4/2017]

(6) No criminal or civil liability is incurred by —

(a) an authorised benchmark administrator; or

(b) any person acting on behalf of an authorised benchmark administrator,

in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[4/2017]

(7) Any authorised benchmark administrator which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every



day or part of a day during which the offence continues after conviction.

[4/2017]

(8) In this section, unless the context otherwise requires —

“regulated financial institution” means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act.

[4/2017]

### **Control of take-over of authorised benchmark administrator**

**123Z.**—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

[4/2017]

(2) A person must not enter into any arrangement in relation to shares in an authorised benchmark administrator that is a company by virtue of which the person would, if the arrangement is carried out, obtain effective control of the authorised benchmark administrator, unless the person has obtained the prior approval of the Authority to the person’s entering into the arrangement.

[4/2017]

(3) An application for the Authority’s approval under subsection (2) must be made in writing, and the Authority may approve the application if the Authority is satisfied that —

- (a) the applicant is a fit and proper person to have effective control of the authorised benchmark administrator;
- (b) having regard to the applicant’s likely influence, the authorised benchmark administrator is likely to continue

to carry on a business of administering a designated benchmark prudently and comply with the provisions of this Act and directions made thereunder; and

- (c) the applicant satisfies such other criteria as may be prescribed by regulations made under section 123ZZA or as the Authority may specify in written directions.

[4/2017]

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

- (a) restricting the applicant's disposal or further acquisition of shares or voting power in the authorised benchmark administrator; or
- (b) restricting the applicant's exercise of voting power in the authorised benchmark administrator,

and the applicant must comply with such conditions.

[4/2017]

(5) Any condition imposed under subsection (4) has effect despite any provision of the Companies Act 1967 or anything contained in the constitution of the authorised benchmark administrator.

[4/2017]

(6) For the purposes of this section and section 123ZA —

- (a) a reference to a person entering into an arrangement in relation to shares includes —
  - (i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;
  - (ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of the holder's shares to the first person;
  - (iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to the first person or to the first person's order, whether the

right is exercisable presently or in the future and whether on fulfilment of a condition or not; and

- (iv) becoming a trustee of a trust in respect of those shares;
- (b) a person is regarded as obtaining effective control of the authorised benchmark administrator by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —
  - (i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark administrator; or
  - (ii) control, directly or indirectly, 20% or more of the voting power in the authorised benchmark administrator; and
- (c) a reference to the voting power in the authorised benchmark administrator is a reference to the total number of votes that may be cast in a general meeting of the authorised benchmark administrator.

[4/2017]

(7) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

### **Objection to control of authorised benchmark administrator**

**123ZA.**—(1) The Authority may serve a written notice of objection on —

- (a) any person required to obtain the Authority's approval or who has obtained the approval under section 123Z; or

- (b) any person who, whether before, on or after 8 October 2018, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark administrator or controls, directly or indirectly, 20% or more of the voting power in the authorised benchmark administrator,

if the Authority is satisfied that —

- (c) any condition of approval imposed on the person under section 123Z(4) has not been complied with;
- (d) the person is not or ceases to be a fit and proper person to have effective control of the authorised benchmark administrator;
- (e) having regard to the likely influence of the person, the authorised benchmark administrator is not able to or is no longer likely to conduct the activity of administering a designated benchmark prudently or to comply with the provisions of this Act or any direction made thereunder;
- (f) the person does not or ceases to satisfy such criteria as may be prescribed by regulations made under section 123ZZA;
- (g) the person has provided false or misleading information or documents in connection with an application under section 123Z; or
- (h) the Authority would not have granted its approval under section 123Z had it been aware, at that time, of circumstances relevant to the person's application for such approval.

[4/2017]

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

- (a) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;

- (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the person;
- (d) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

[4/2017]

(3) The Authority must, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection must —

- (a) take such steps as are necessary to ensure that the person ceases to be a party to the arrangement described in section 123Z(2), ceases to hold 20% or more of the issued share capital of the authorised benchmark administrator in the manner described in subsection (1)(b), or ceases to control 20% or more of the voting power in the authorised benchmark administrator in the manner described in subsection (1)(b); or
- (b) comply with such other requirements as the Authority may specify in written directions.

[4/2017]

(4) Any person served with a notice of objection under this section must comply with the notice.

[4/2017]

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

## Appeals

**123ZB.** Any authorised benchmark administrator who is aggrieved by —

- (a) the refusal of the Authority to grant an approval to the authorised benchmark administrator to appoint a person as its chief executive officer or director; or
- (b) the direction of the Authority to the authorised benchmark administrator to remove an officer from office or employment,

may within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[4/2017]

### *Division 3 — Benchmark Submitters of Designated Benchmarks*

#### *Subdivision (1) — Authorised benchmark submitter*

### **Requirement for authorisation**

**123ZC.**—(1) Subject to section 123ZH(1), no person may, as principal or agent, carry on a business or activity of providing information in relation to a designated benchmark unless the person is —

- (a) an authorised benchmark submitter; or
- (b) a designated benchmark submitter.

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

**Application for authorisation**

**123ZD.**—(1) A corporation may apply to the Authority to be authorised as an authorised benchmark submitter.

[4/2017]

(2) An application made under subsection (1) must be —

(a) made in such form and manner as the Authority may specify; and

(b) accompanied by a non-refundable application fee of an amount prescribed by regulations made under section 123ZZA, which must be paid in the manner specified by the Authority.

[4/2017]

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

[4/2017]

**Power of Authority to authorise benchmark submitters**

**123ZE.**—(1) Where a corporation mentioned in section 123ZD(1) has made an application under that provision, the Authority may authorise the corporation as an authorised benchmark submitter.

[4/2017]

(2) The Authority may authorise a corporation as an authorised benchmark submitter under subsection (1) subject to such conditions or restrictions as the Authority may impose by written notice, including conditions or restrictions, either of a general or specific nature, relating to the activities that the corporation may undertake.

[4/2017]

(3) The Authority may, at any time, by written notice to the authorised benchmark submitter, vary any condition or restriction or impose any further condition or restriction.

[4/2017]

(4) An authorised benchmark submitter must, for the duration of the authorisation, satisfy every condition or restriction that may be imposed on it under subsections (2) and (3).

[4/2017]

(5) Subject to regulations made under this Act, the Authority may refuse to authorise a corporation as an authorised benchmark submitter if —

- (a) the corporation has not provided the Authority with such information, as the Authority may require, relating to —
  - (i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business or operations; or
  - (ii) any circumstances likely to affect the corporation's manner of conducting business or operations;
- (b) any information or document provided by the corporation to the Authority is false or misleading;
- (c) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (d) execution against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) a receiver, a receiver and manager, judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;
- (f) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or substantial shareholder (as the case may be) being a compromise or scheme of arrangement that is still in operation;
- (g) the corporation, a substantial shareholder of the corporation or any officer of the corporation —
  - (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty



- or the conviction for which involved a finding that the corporation, shareholder or officer (as the case may be) had acted fraudulently or dishonestly; or
- (ii) has been convicted of an offence under this Act committed before, on or after 8 October 2018;
- (h) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (i) the Authority has reason to believe that the corporation may not be able to act in the best interests of a class or classes of users of the designated benchmark having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;
- (j) the Authority is not satisfied as to —
- (i) the financial standing of the corporation or any of its substantial shareholders; or
- (ii) the manner in which the business of the corporation is to be conducted, or the operations of the corporation are to be conducted, in relation to the activity of providing information in relation to a designated benchmark;
- (k) the Authority is not satisfied as to the record of past performance or expertise of the corporation in providing information in relation to a designated benchmark, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with providing information in relation to a designated benchmark;
- (l) there are other circumstances which are likely to —
- (i) lead to improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or

- (ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;
- (m) the Authority has reason to believe that the corporation will not carry on a business or activity of providing information in relation to a designated benchmark efficiently, honestly or fairly, or that any of the officers or employees of the corporation will not act efficiently, honestly or fairly in relation to such business;
- (n) the Authority is of the opinion that it would be contrary to the interests of the public to authorise the corporation as an authorised benchmark submitter; or
- (o) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(6) Subject to subsection (7), the Authority must not refuse to authorise a corporation as an authorised benchmark submitter without giving the corporation an opportunity to be heard.

[4/2017]

(7) The Authority may refuse to authorise a corporation as an authorised benchmark submitter on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;

- (d) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(8) Any corporation that is aggrieved by a refusal of the Authority to grant an authorisation under subsection (1) may, within 30 days after the corporation is notified of the refusal, appeal to the Minister whose decision is final.

[4/2017]

(9) Any authorised benchmark submitter that contravenes subsection (4) shall be guilty of an offence.

[4/2017]

### **False statements in relation to application for authorisation**

**123ZF.** Any person who, in connection with an application for authorisation as an authorised benchmark submitter —

- (a) without reasonable excuse, makes a statement which is false or misleading in a material particular; or
- (b) without reasonable excuse, 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 \$50,000.

[4/2017]

### **Revocation, suspension or withdrawal of authorisation**

**123ZG.**—(1) The Authority may revoke the authorisation of a corporation as an authorised benchmark submitter under section 123ZE(1) if —

- (a) there exists a ground on which the Authority may refuse an application under section 123ZE(5);
- (b) the corporation does not commence providing information in relation to a designated benchmark within 12 months starting on the date on which it was granted the authorisation under section 123ZE(1);

- (c) the corporation ceases to carry on a business or activity of providing information in relation to a designated benchmark;
- (d) where the corporation carries on a business or activity of providing information in relation to a designated benchmark, the Authority has withdrawn the designation of that designated benchmark under section 123C;
- (e) where the corporation carries on a business or activity of providing information in relation to a designated benchmark in respect of more than one designated benchmark, the Authority has withdrawn the designation of all of those designated benchmarks under section 123C;
- (f) the Authority has reason to believe that the corporation, or any of its officers or employees, has not performed its or their duties efficiently, honestly or fairly;
- (g) the corporation has contravened any condition or restriction applicable in respect of its authorisation, any written direction issued to it by the Authority under this Act, or any provision of this Act, or has failed to comply with any principle or rule under the code on designated benchmark of the authorised benchmark administrator or exempt benchmark administrator to which it provides information;
- (h) it appears to the Authority that the corporation has failed to satisfy any of its obligations in compliance with, under or arising from —
  - (i) this Act; or
  - (ii) any written direction issued by the Authority under this Act;
- (i) the Authority has reason to believe that the corporation is carrying on a business or activity of providing information in relation to a designated benchmark in a manner that is contrary to the interests of the public or a section of the public;

- (j) the corporation has provided any information or document to the Authority that is false or misleading; or
- (k) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(2) The Authority may —

- (a) suspend the authorisation granted to an authorised benchmark submitter for a specific period instead of revoking it under subsection (1); and
- (b) at any time extend or revoke the suspension.

[4/2017]

(3) Subject to subsection (4), the Authority, may upon a written application made to it by an authorised benchmark submitter, in such form and manner as the Authority may specify, withdraw the authorisation of the authorised benchmark submitter.

[4/2017]

(4) The Authority may refuse to withdraw the authorisation of an authorised benchmark submitter under subsection (3) where the Authority is of the opinion that —

- (a) there is any matter concerning the corporation which should be investigated before the authorisation is withdrawn; or
- (b) the withdrawal of the authorisation would not be in the public interest.

[4/2017]

(5) Subject to subsection (6), the Authority must not —

- (a) revoke the authorisation granted to an authorised benchmark submitter under subsection (1);
- (b) suspend the authorisation granted to an authorised benchmark submitter under subsection (2); or

(c) refuse the withdrawal of the authorisation granted to an authorised benchmark submitter under subsection (4), without giving the authorised benchmark submitter an opportunity to be heard.

[4/2017]

(6) The Authority may revoke or suspend the authorisation of a corporation as an authorised benchmark submitter without giving the corporation an opportunity to be heard on any of the following grounds:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, for or in respect of any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;
- (d) the Authority has withdrawn the designation of the designated benchmark under section 123C;
- (e) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the corporation.

[4/2017]

(7) Any corporation that is aggrieved by a decision of the Authority made in relation to the corporation under subsection (1), (2) or (4) may, within 30 days after the corporation is notified of the decision, appeal to the Minister whose decision is final.

[4/2017]

(8) Despite the lodging of an appeal under subsection (7), any action taken by the Authority under this section continues to have effect pending the Minister's decision.

[4/2017]

(9) The Minister may, when deciding an appeal under subsection (7), make such modification as he or she considers

necessary to any action taken by the Authority under this section, and such modified action has effect starting on the date of the Minister's decision.

[4/2017]

*Subdivision (2) — Exempt benchmark submitter*

**Exemptions from requirement to be authorised as authorised benchmark submitter**

**123ZH.**—(1) The following persons are exempt from section 123ZC(1):

- (a) any bank licensed under the Banking Act 1970;
- (b) any merchant bank licensed under the Banking Act 1970;
- (c) any finance company licensed under the Finance Companies Act 1967;
- (d) any company or co-operative society licensed under the Insurance Act 1966;
- (e) any approved exchange, recognised market operator or approved holding company;
- (f) any approved clearing house or recognised clearing house;
- (g) any holder of a capital markets services licence;
- (h) any authorised benchmark administrator;
- (i) any financial adviser licensed under the Financial Advisers Act 2001;
- (j) such other person or class of persons as the Authority may exempt by regulations made under section 337.

[4/2017; 1/2020]

(2) The Authority may by regulations made under section 123ZZA or by written notice impose conditions or restrictions on an exempt person in relation to the business or activity of providing information in relation to a designated benchmark or any related matter and the exempt person must comply with such conditions or restrictions.

[4/2017]

(3) Any exempt person who contravenes any condition or restriction imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) The Authority may revoke an exemption granted to any person under this section —

- (a) if the person contravenes any provision of this Act which is applicable to it or any condition or restriction imposed on it under subsection (2);
- (b) if the person contravenes any direction issued to it under section 123ZZB;
- (c) if the person has failed to comply with any principle or rule under the code on designated benchmark;
- (d) where the person carries on a business or activity of providing information in relation to a particular designated benchmark, if the Authority has withdrawn the designation of that designated benchmark under section 123C;
- (e) where the person carries on a business or activity of providing information in relation to a designated benchmark in respect of more than one designated benchmark, the Authority has withdrawn the designation of all of those designated benchmarks under section 123C; or
- (f) if the Authority considers that the person is carrying on a business or activity of providing information in relation to a designated benchmark in a manner that is, in the opinion of the Authority, contrary to the interests of a class, or classes, of users of a designated benchmark, or the interests of the public.

[4/2017]



(5) Where the Authority revokes an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

[4/2017]

(6) A person who is aggrieved by a decision of the Authority made under subsection (4) may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[4/2017]

*Subdivision (3) — Designated benchmark submitter*

**Power of Authority to designate benchmark submitters**

**123ZI.**—(1) The Authority may, by order in the *Gazette*, designate any of the following persons as a designated benchmark submitter in relation to a designated benchmark:

- (a) a bank licensed under the Banking Act 1970;
- (b) a recognised market operator;
- (c) a holder of a capital markets services licence;
- (d) an exempt person;
- (e) a person who belongs to such class of persons which is prescribed by regulations made under section 123ZZA, being a class of persons that the Authority believes on reasonable grounds is capable of providing information in relation to a designated benchmark.

[4/2017]

(2) For the purposes of subsection (1), in deciding whether to designate a person as a designated benchmark submitter in respect of a designated benchmark, the Authority must have regard to —

- (a) the robustness of the designated benchmark;
- (b) the extent to which the information or expressions of opinion which the person is able to provide in relation to the designated benchmark is or is likely to be necessary for the functionality of the market or markets in which the designated benchmark is used for reference;

- (c) the size and extent of the person's actual and potential participation in the market that the designated benchmark seeks to measure, and the extent to which such actual or potential participation is or is likely to be material to the determination of the designated benchmark;
  - (d) the quality of the information or expressions of opinion which the person is able to provide to enable an authorised benchmark administrator or exempt benchmark administrator to determine the designated benchmark;
  - (e) the selection criteria of the authorised benchmark administrator or exempt benchmark administrator, in relation to the benchmark submitters of a designated benchmark; and
  - (f) such other factors as the Authority considers relevant.
- [4/2017]
- (3) The Authority must not exercise its powers under subsection (1) without giving the person concerned an opportunity to be heard.
- [4/2017]
- (4) A person who is aggrieved by the exercise of the Authority's powers under subsection (1) may, within 30 days after the date the order under subsection (1) is published, appeal to the Minister whose decision is final.
- [4/2017]
- (5) Despite the lodging of an appeal under subsection (4), a person designated by the Authority under subsection (1) is treated as a designated benchmark submitter pending the Minister's decision.
- [4/2017]
- (6) A designated benchmark submitter is not obliged to disclose any information to an authorised benchmark administrator or exempt benchmark administrator if the designated benchmark submitter is prohibited by any written law from disclosing such information.
- [4/2017]
- (7) The Authority may, by order in the *Gazette*, withdraw the designation of any designated benchmark submitter at any time if the Authority is of the opinion that the considerations in subsection (2) are no longer valid or satisfied.
- [4/2017]

**Obligation to provide information for purposes of determining designated benchmark**

**123ZJ.**—(1) Every designated benchmark submitter must provide to the authorised benchmark administrator or exempt benchmark administrator in respect of a designated benchmark such information or expression of opinion for the purposes of determining the designated benchmark, as the Authority may specify by written notice to the designated benchmark submitter, at such time and in such form or manner as the Authority may specify by written notice.  
[4/2017]

(2) Any designated benchmark submitter which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.  
[4/2017]

**Power of Authority to impose requirements or restrictions**

**123ZK.**—(1) The Authority may, by written notice, impose requirements or restrictions on a designated benchmark submitter.  
[4/2017]

(2) The Authority may, at any time, by written notice to a designated benchmark submitter, vary any requirement or restriction imposed on the designated benchmark submitter.  
[4/2017]

(3) Any designated benchmark submitter which fails to comply with any requirement or restriction imposed under subsection (1) or (2) shall be guilty of an offence.  
[4/2017]

*Subdivision (4) — Obligations of authorised benchmark submitters, exempt benchmark submitters and designated benchmark submitters*

**General obligations**

**123ZL.**—(1) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must, in

relation to the designated benchmark in respect of which it provides information —

- (a) manage any risks associated with its business and operations prudently;
- (b) ensure that the systems and controls concerning its performing the activity of providing information in relation to a designated benchmark are adequate and appropriate for the scale and nature of its operations;
- (c) have sufficient financial, human and system resources —
  - (i) to carry on a business or activity of providing information in relation to a designated benchmark; and
  - (ii) to meet contingencies or disasters; and
- (d) in the case of an authorised benchmark submitter or a designated benchmark submitter, ensure that it appoints or employs fit and proper persons as its chairperson, chief executive officer, directors and key management officers.

[4/2017]

(2) In subsection (1)(c), “contingencies or disasters” includes technical disruptions occurring within automated systems.

[4/2017]

### **Obligation to notify Authority of certain matters**

**123ZM.**—(1) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) in the case of an authorised benchmark submitter, any material change to the information provided by the authorised benchmark submitter in its application under section 123ZD(1);
- (b) any change to the type or number of designated benchmarks in relation to which the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) is

carrying on a business or activity of providing information in relation to a designated benchmark;

- (c) the carrying on of any business (called in this section a proscribed business) by the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) other than such business or such class of businesses prescribed by regulations made under section 123ZZA;
- (d) the acquisition by the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) of a substantial shareholding in a corporation (called in this section a proscribed corporation), which carries on any business other than such business or such class of businesses prescribed by regulations made under section 123ZZA;
- (e) any other matter that the Authority may —
  - (i) prescribe by regulations made under section 123ZZA for the purposes of this paragraph; or
  - (ii) specify by written notice to the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(2) Without limiting section 123ZZB(1), the Authority may, at any time after receiving a notice mentioned in subsection (1), issue directions to the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter —

- (a) where the notice relates to a matter mentioned in subsection (1)(c) —
  - (i) to cease carrying on the proscribed business; or
  - (ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose; or

(b) where the notice relates to a matter mentioned in subsection (1)(d) —

- (i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as specified in the directions; or
- (ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose.

[4/2017]

(3) An authorised benchmark submitter, an exempt benchmark submitter and a designated benchmark submitter must comply with every direction issued to it under subsection (2) despite anything to the contrary in the Companies Act 1967 or any other law.

[4/2017]

(4) An authorised benchmark submitter, an exempt benchmark submitter and a designated benchmark submitter must notify the Authority of any matter that the Authority may prescribe by regulations made under section 123ZZA for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

[4/2017]

(5) An authorised benchmark submitter, an exempt benchmark submitter and a designated benchmark submitter must notify the Authority of any matter that the Authority may specify by written notice to the authorised benchmark submitter, exempt benchmark submitter, or designated benchmark submitter (as the case may be) no later than such time as the Authority may specify in that notice.

[4/2017]

### **Obligation to maintain proper records**

**123ZN.**—(1) Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must maintain a record of the following in respect of a designated benchmark:

- (a) all information or expressions of opinion which the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case

may be) provides to any authorised benchmark administrator or exempt benchmark administrator;

- (b) the basis of the information or the rationale of the expressions of opinion referred to in paragraph (a);
- (c) such other matters as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

(2) The records mentioned in subsection (1) must be kept for such period, and in such form and manner, as may be prescribed by regulations made under section 123ZZA.

[4/2017]

### **Obligation to submit periodic reports**

**123ZO.** Every authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, must submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe by regulations made under section 123ZZA.

[4/2017]

### **Notification of change of particulars**

**123ZP.** Where —

- (a) an authorised benchmark submitter or exempt benchmark submitter ceases to carry on a business or activity of providing information in relation to a designated benchmark; or
- (b) a change occurs in any matter records of which are required by section 123ZQ(1) to be kept in relation to the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter,

the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) must, not later than 14 days after the occurrence of the event, provide particulars of the event to the Authority in the form and manner prescribed by regulations made under section 123ZZA.

[4/2017]

**Records of authorised benchmark submitters, exempt benchmark submitters and designated benchmark submitters**

**123ZQ.**—(1) The Authority must keep records of every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter, setting out the following information of each authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter:

- (a) the name of the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, as the case may be;
- (b) the address of the principal place at which the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) carries on the business or activity of providing information in relation to a designated benchmark;
- (c) where the business or activity of providing information in relation to a designated benchmark is carried on under a name or style other than the name of the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, the name or style under which the business is carried on;
- (d) such other information as may be prescribed by regulations made under section 123ZZA.

[4/2017]

(2) The Authority may publish the information mentioned in subsection (1) or any part of that information in any manner.

[4/2017]

**Obligation to assist Authority**

**123ZR.** Every authorised benchmark submitter, exempt benchmark submitter and designated benchmark submitter must provide such assistance to the Authority as the Authority may require for the proper administration of this Act, including —

- (a) the furnishing of returns; and



- (b) the provision of books and information relating to the business of the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

### **Penalties under this Subdivision**

**123ZS.** Any authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter which contravenes section 123ZL, 123ZM, 123ZN, 123ZO, 123ZP or 123ZR shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

#### *Subdivision (5) — Matters requiring approval of Authority*

### **Approval of chief executive officer and director of authorised benchmark submitter or designated benchmark submitter**

**123ZT.—**(1) Subject to subsection (3), an authorised benchmark submitter or designated benchmark submitter must not —

- (a) appoint a person as its chief executive officer or director;  
or
- (b) change the nature of the appointment of a person as a director from one that is non-executive to one that is executive,

unless it has the approval of the Authority to do so.

[4/2017]

(2) Where an authorised benchmark submitter or a designated benchmark submitter has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1)(a), the person may be re-appointed as a chief executive officer or director (as the case may be) of the authorised benchmark submitter or designated benchmark submitter (as the case may be)

immediately upon the expiry of the earlier term without the approval of the Authority.

[4/2017]

(3) Subsection (1) does not apply to the appointment of a person as a director of a foreign company, or the change in the nature of the appointment of a person as a director of a foreign company if, at the time of the appointment or change, the person —

- (a) does not reside in Singapore; and
- (b) is not directly responsible for its carrying out of the activity of providing information in relation to a designated benchmark or any part of the activity of providing information in relation to a designated benchmark.

[4/2017]

(4) Without affecting any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified to the authorised benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(5) Subject to subsection (6), the Authority must not refuse an application for approval under subsection (1) without giving the authorised benchmark submitter or designated benchmark submitter an opportunity to be heard.

[4/2017]

(6) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the authorised benchmark submitter or designated benchmark submitter an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the person;
- (c) the person has been convicted, whether in Singapore or elsewhere, of an offence —

- (i) involving fraud or dishonesty or the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; and
- (ii) punishable with imprisonment for a term of 3 months or more.

[4/2017]

(7) Where the Authority refuses an application for approval under subsection (1), the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

[4/2017]

(8) Without affecting the Authority's power to impose conditions or restrictions under section 123ZE(2) or (3), or requirements or restrictions under section 123ZK, the Authority may, at any time by written notice to the authorised benchmark submitter or designated benchmark submitter, impose on it a condition requiring it to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

[4/2017]

(9) This section does not apply to any designated benchmark submitter that is —

- (a) a bank licensed under the Banking Act 1970;
- (b) a merchant bank licensed under the Banking Act 1970;
- (c) a finance company licensed under the Finance Companies Act 1967;
- (d) a holder of a capital markets services licence for any regulated activity;
- (e) a licensed financial adviser under the Financial Advisers Act 2001;
- (f) a direct insurer licensed under the Insurance Act 1966 to carry on life business;
- (g) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or

- (h) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(10) Any authorised benchmark submitter or designated benchmark submitter which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) Any authorised benchmark submitter or designated benchmark submitter which contravenes any condition imposed on it under subsection (8) shall be guilty of an offence.

[4/2017]

### **Removal of officer of authorised benchmark submitter or designated benchmark submitter**

**123ZU.**—(1) Despite the provisions of any other written law —

- (a) an authorised benchmark submitter or a designated benchmark submitter must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and
- (b) an authorised benchmark submitter or a designated benchmark submitter, that is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (c) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 8 October 2018, being an offence —
- (i) involving fraud or dishonesty;
- (ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or
- (iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;

- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him or her in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;
- (g) has had a prohibition order under section 68 of the Financial Advisers Act 2001, section 74 of the Insurance Act 1966, section 101A or 123ZZC made against him or her that remains in force; or
- (h) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
  - (i) which is being or has been wound up by a court; or
  - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

[4/2017]

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director of an authorised benchmark submitter or a designated benchmark submitter, that is incorporated in Singapore, or an executive officer of an authorised benchmark submitter or a designated benchmark submitter —

- (a) has wilfully contravened or wilfully caused the authorised benchmark submitter or designated benchmark submitter (as the case may be) to contravene any provision of this Act;
- (b) has, without reasonable excuse, failed to secure the compliance of the authorised benchmark submitter or designated benchmark submitter (as the case may be) with

this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act; or

(c) has failed to discharge any of the duties of his or her office, the Authority may, if it thinks it necessary in the interests of the public or a section of the public, or a class or classes of users of a designated benchmark, by written notice to the authorised benchmark submitter or designated benchmark submitter (as the case may be) direct the authorised benchmark submitter or designated benchmark submitter to remove the director or executive officer (as the case may be) from the director's or executive officer's office or employment within such period as the Authority may specify in the notice, and the authorised benchmark submitter or designated benchmark submitter (as the case may be) must comply with the notice.

[4/2017]

(3) Without affecting any other matter that the Authority may consider relevant, the Authority may, when determining whether a director or an executive officer of an authorised benchmark submitter or designated benchmark submitter (as the case may be) has failed to discharge the duties of the director's or executive officer's office for the purposes of subsection (2)(c), have regard to such criteria as may be prescribed by regulations made under section 123ZZA or notified in writing to the authorised benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(4) The Authority must not direct an authorised benchmark submitter or designated benchmark submitter to remove a person from the person's office under subsection (2) without giving the authorised benchmark submitter or designated benchmark submitter (as the case may be) an opportunity to be heard.

[4/2017]

(5) Where the Authority directs an authorised benchmark submitter or a designated benchmark submitter to remove a person from the person's office or employment under subsection (2), the Authority need not give that person an opportunity to be heard.

[4/2017]

(6) No criminal or civil liability is incurred by —

- (a) an authorised benchmark submitter;
- (b) a designated benchmark submitter; or
- (c) any person acting on behalf of the authorised benchmark submitter or designated benchmark submitter,

in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

[4/2017]

(7) This section does not apply to any designated benchmark submitter that is —

- (a) a bank licensed under the Banking Act 1970;
- (b) a merchant bank licensed under the Banking Act 1970;
- (c) a finance company licensed under the Finance Companies Act 1967;
- (d) the holder of a capital markets services licence for any regulated activity;
- (e) a licensed financial adviser under the Financial Advisers Act 2001;
- (f) a direct insurer licensed under the Insurance Act 1966 to carry on life business;
- (g) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or
- (h) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(8) Any authorised benchmark submitter or designated benchmark submitter which contravenes subsection (1), or any direction issued by the Authority under subsection (2), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding

\$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(9) In this section, unless the context otherwise requires —

“regulated financial institution” means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act.

[4/2017]

### **Control of take-over of authorised benchmark submitter or designated benchmark submitter**

**123ZV.**—(1) This section applies to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

[4/2017]

(2) A person must not enter into any arrangement in relation to shares in an authorised benchmark submitter or designated benchmark submitter that is a company by virtue of which the person would, if the arrangement is carried out, obtain effective control of the authorised benchmark submitter or designated benchmark submitter, unless the person has obtained the prior approval of the Authority to the person’s entering into the arrangement.

[4/2017]

(3) An application for the Authority’s approval under subsection (2) must be made in writing, and the Authority may authorise the application if the Authority is satisfied that —



- (a) the applicant is a fit and proper person to have effective control of the authorised benchmark submitter or designated benchmark submitter, as the case may be;
- (b) having regard to the applicant's likely influence, the authorised benchmark submitter or designated benchmark submitter (as the case may be) is likely to continue to carry on a business or activity of providing information in relation to a designated benchmark prudently and comply with the provisions of this Act and directions made thereunder; and
- (c) the applicant satisfies such other criteria as may be prescribed by regulations made under section 123ZZA or as the Authority may specify in written directions.

[4/2017]

(4) Any approval under subsection (3) may be granted to the applicant subject to such conditions as the Authority may determine, including any condition —

- (a) restricting the applicant's disposal or further acquisition of shares or voting power in the authorised benchmark submitter or designated benchmark submitter, as the case may be; or
- (b) restricting the applicant's exercise of voting power in the authorised benchmark submitter or designated benchmark submitter, as the case may be,

and the applicant must comply with such conditions.

[4/2017]

(5) Any condition imposed under subsection (4) has effect despite any provision of the Companies Act 1967 or anything contained in the constitution of the authorised benchmark submitter or designated benchmark submitter.

[4/2017]

(6) For the purposes of this section and section 123ZW —

- (a) a reference to a person entering into an arrangement in relation to shares of an authorised benchmark submitter or

a designated benchmark submitter (as the case may be) includes —

- (i) entering into an agreement or any formal or informal scheme, arrangement or understanding, to acquire those shares;
  - (ii) making or publishing a statement, however expressed, that expressly or impliedly invites the holder of those shares to offer to dispose of the holder's shares to the first person;
  - (iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to the first person or to the first person's order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not; and
  - (iv) becoming a trustee of a trust in respect of those shares;
- (b) a person is regarded as obtaining effective control of the authorised benchmark submitter or designated benchmark submitter (as the case may be) by virtue of an arrangement if the person alone or acting together with any connected person would, if the arrangement is carried out —
- (i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark submitter or designated benchmark submitter, as the case may be; or
  - (ii) control, directly or indirectly, 20% or more of the voting power in the authorised benchmark submitter or designated benchmark submitter, as the case may be; and
- (c) a reference to the voting power in the authorised benchmark submitter or designated benchmark submitter (as the case may be) is a reference to the total number of votes that may be cast in a general meeting of the

authorised benchmark submitter or designated benchmark submitter, as the case may be.

[4/2017]

(7) This section does not apply in relation to any designated benchmark submitter that is —

- (a) a bank licensed under the Banking Act 1970;
- (b) a merchant bank licensed under the Banking Act 1970;
- (c) a finance company licensed under the Finance Companies Act 1967;
- (d) the holder of a capital markets services licence for any regulated activity;
- (e) a licensed financial adviser under the Financial Advisers Act 2001;
- (f) a direct insurer licensed under the Insurance Act 1966 to carry on life business;
- (g) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or
- (h) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(8) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

### **Objection to control of authorised benchmark submitter or designated benchmark submitter**

**123ZW.**—(1) The Authority may serve a written notice of objection on —

- (a) any person required to obtain the Authority's approval or who has obtained the approval under section 123ZV; or

- (b) any person who, whether before, on or after 8 October 2018, either alone or together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the authorised benchmark submitter or designated benchmark submitter (as the case may be) or controls, directly or indirectly, 20% or more of the voting power in the authorised benchmark submitter or designated benchmark submitter, as the case may be,

if the Authority is satisfied that —

- (c) any condition of approval imposed on the person under section 123ZV(4) has not been complied with;
- (d) the person is not or ceases to be a fit and proper person to have effective control of the authorised benchmark submitter or designated benchmark submitter, as the case may be;
- (e) having regard to the likely influence of the person, the authorised benchmark submitter or designated benchmark submitter (as the case may be) is not able to or is no longer likely to carry on a business or activity of providing information in relation to a designated benchmark prudently and comply with the provisions of this Act and any direction made under this Act;
- (f) the person does not or ceases to satisfy such criteria as may be prescribed by regulations made under section 123ZZA;
- (g) the person has provided false or misleading information or documents in connection with an application under section 123ZV; or
- (h) the Authority would not have granted its approval under section 123ZV had the Authority been aware, at that time, of circumstances relevant to the person's application for such approval.

[4/2017]

(2) The Authority must not serve a notice of objection on any person without giving the person an opportunity to be heard, except in the following circumstances:

- (a) the person is in the course of being wound up or otherwise dissolved or, in the case of an individual, is an undischarged bankrupt whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person;
- (c) a prohibition order under section 123ZZC has been made by the Authority, and remains in force, against the person;
- (d) the person has been convicted, whether in Singapore or elsewhere, of any offence involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly.

[4/2017]

(3) Any person served with the written notice of objection must, within the period specified in the notice —

- (a) take such steps as are necessary to ensure that the person ceases to be a party to the arrangement described in section 123ZV(2), ceases to hold 20% or more of the issued share capital of the authorised benchmark submitter or designated benchmark submitter (as the case may be) in the manner described in subsection (1)(b), or ceases to control 20% or more of the voting power in the authorised benchmark submitter or designated benchmark submitter (as the case may be) in the manner described in subsection (1)(b); and
- (b) comply with such other requirements as the Authority may specify in the notice.

[4/2017]

(4) This section does not apply in relation to any designated benchmark submitter that is —

- (a) a bank licensed under the Banking Act 1970;
- (b) a merchant bank licensed under the Banking Act 1970;
- (c) a finance company licensed under the Finance Companies Act 1967;

- (d) the holder of a capital markets services licence for any regulated activity;
- (e) a licensed financial adviser under the Financial Advisers Act 2001;
- (f) a direct insurer licensed under the Insurance Act 1966 to carry on life business;
- (g) an insurance intermediary registered or regulated under the Insurance Act 1966, who arranges contracts of insurance in Singapore in respect of life business only; or
- (h) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(5) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both.

[4/2017]

## Appeals

**123ZX.** Any authorised benchmark submitter or designated benchmark submitter that is aggrieved by —

- (a) the refusal of the Authority to grant an approval to the authorised benchmark submitter or the designated benchmark submitter to appoint a person as its chief executive officer or director; or
- (b) the direction of the Authority to the authorised benchmark submitter or the designated benchmark submitter to remove an officer from office or employment,

may, within 30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

[4/2017]

*Division 4 — Information Gathering Powers over Financial  
Benchmarks, Disclosure of Information  
and Record Keeping*

**Provision of information to Authority**

**123ZY.**—(1) The Authority may, by regulations made under section 123ZZA, require a person or a class of persons whom the Authority believes on reasonable grounds is capable of giving information on or concerning any financial benchmark or any market which a financial benchmark seeks to measure to disclose to the Authority the information that the person has under the person's control or possession, in such form and manner, and within such period or periods, as may be prescribed in those regulations.

[4/2017]

(2) The Authority may, by written notice to any person whom the Authority believes on reasonable grounds is capable of giving information on or concerning any financial benchmark or any market which a financial benchmark seeks to measure, require such person to disclose to the Authority the information that the person has under the person's control or possession, in such form and manner, and within such period or periods, as may be specified in the notice.

[4/2017]

(3) Subject to subsection (5), any person to whom a notice is issued under subsection (2) must comply with the notice.

[4/2017]

(4) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(5) A person referred to in subsection (1) or a person to whom a notice is issued under subsection (2) is not obliged to disclose any information where the person is prohibited by any written law from disclosing such information.

[4/2017]

(6) Where a person claims, before providing the Authority with any information that the person is required to furnish under subsection (1)

or (2), that the information might tend to incriminate the person, the information —

- (a) is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (4) or in relation to a contravention of subsection (1); but
- (b) is admissible in evidence for civil proceedings under Part 12.

[4/2017]

### **Power to require maintenance of records and submit periodic reports**

**123ZZ.**—(1) The Authority may, by regulations made under section 123ZZA or by written notice, require any financial institution or class of financial institutions to —

- (a) maintain a record of —
  - (i) all transactions undertaken by the financial institution in relation to one or more underlying things that are the subject of a designated benchmark; and
  - (ii) all transactions undertaken by the financial institution in relation to financial instruments that use a designated benchmark for reference to determine the price, value, interest payable, sums due or performance of the financial instrument,  
in such form and manner as the Authority may prescribe in those regulations or specify by written notice, including —
    - (iii) the extent to which the record includes details of each transaction or exposure; and
    - (iv) the period of time that the record is to be maintained; and
- (b) submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe in those regulations or specify by written notice.

[4/2017]



- (2) In this section, “financial institution” means —
- (a) a bank licensed under the Banking Act 1970;
  - (b) a merchant bank that is licensed under the Banking Act 1970;
  - (c) a finance company licensed under the Finance Companies Act 1967;
  - (d) the holder of a capital markets services licence under this Act;
  - (e) a licensed financial adviser under the Financial Advisers Act 2001;
  - (f) a company or co-operative society licensed under the Insurance Act 1966 as a direct insurer carrying on life business;
  - (g) an insurance intermediary licensed under any written law relating to insurance intermediaries if the intermediary arranges contracts of insurance in respect of life business; or
  - (h) such other person or class of persons as may be prescribed by regulations made under section 123ZZA.

[4/2017; 1/2020]

(3) Any person who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### *Division 5 — General Powers*

#### **Power of Authority to make regulations**

**123ZZA.**—(1) Without affecting section 341, the Authority may make regulations prescribing matters required or permitted by this

Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part.

[4/2017]

(2) The regulations made under subsection (1) may, in particular —

(a) prescribe the requirements that an authorised benchmark administrator or an exempt benchmark administrator or a class of any of the foregoing persons must comply with; and

(b) prescribe the requirements that an authorised benchmark submitter, an exempt benchmark submitter, a designated benchmark submitter or a class of any of the foregoing persons must comply with.

[4/2017]

(3) The regulations made under this section may provide —

(a) that a contravention of any specified provision of those regulations shall be an offence; and

(b) for a penalty not exceeding a fine of \$100,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Power of Authority to issue written directions**

**123ZZB.**—(1) The Authority may, if it thinks it necessary or expedient, in the interests of a class, or classes, of users of a designated benchmark, or in the interests of the public or a section of the public, issue written directions, either of a general or specific nature, to any of the following persons or class of persons, requiring such person or class of persons to comply with such requirements as the Authority may specify in the written directions:

(a) an authorised benchmark administrator;

(b) an exempt benchmark administrator;

- (c) an authorised benchmark submitter;
- (d) an exempt benchmark submitter;
- (e) a designated benchmark submitter;
- (f) a representative of any authorised benchmark administrator, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter;
- (g) a class of any of the persons mentioned in paragraphs (a) to (f).

[4/2017]

(2) Without limiting subsection (1), any written direction may be issued with respect to —

- (a) the standards to be maintained by the person concerned in carrying out the activity of administering a designated benchmark, or the activity of providing information in relation to a designated benchmark;
- (b) the type and frequency of submission of financial returns and other information to be submitted to the Authority; and
- (c) the qualifications, experience and training of representatives,

and the person to whom such direction is issued must comply with the direction.

[4/2017]

(3) Any person who contravenes any of the directions issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[4/2017]

**Power of Authority to make prohibition orders**

**123ZZC.**—(1) The Authority may, by written notice, make a prohibition order against a relevant person if —

- (a) the Authority cancels or revokes the authorisation of the relevant person as an authorised benchmark administrator;
- (b) where the relevant person is exempt from the requirement to be authorised as an authorised benchmark administrator under section 123K(1), the Authority has reason to believe that circumstances exist under which, if the person were an authorised benchmark administrator, there would exist a ground on which the Authority may revoke its authorisation under section 123J;
- (c) the Authority suspends or revokes the authorisation of the relevant person as an authorised benchmark submitter;
- (d) where the relevant person is exempt from the requirement to be authorised as an authorised benchmark submitter under section 123ZH(1), the Authority has reason to believe that circumstances exist under which, if the relevant person were an authorised benchmark submitter, there would exist a ground on which the Authority may suspend or revoke its authorisation under section 123ZG;
- (e) the Authority has reason to believe that the relevant person is contravening, is likely to contravene or has contravened —
  - (i) any provision of this Act;
  - (ii) any condition or restriction imposed by the Authority under this Act; or
  - (iii) any written direction issued by the Authority under this Act;
- (f) the relevant person has been convicted of an offence under this Act or has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that the person acted fraudulently or dishonestly;

- (g) the relevant person has an order for the payment of a civil penalty made against the person by a court under Part 12 or has entered into an agreement with the Authority to pay a civil penalty under that Part;
- (h) the relevant person has been convicted of an offence involving the contravention of any law or requirement of a foreign country or territory relating to the activity of administering a designated benchmark, or providing information in relation to a designated benchmark;
- (i) the relevant person has been removed at the direction of the Authority from office or employment as an officer of the authorised benchmark administrator under section 123Y(2); or
- (j) the relevant person has been removed at the direction of the Authority from office or employment as an officer of an authorised benchmark submitter or a designated benchmark submitter under section 123ZU(2).

[4/2017]

(2) In subsection (1), “relevant person” means —

- (a) an authorised benchmark administrator or a person who was previously an authorised benchmark administrator;
- (b) a person that is exempt from the requirement to be authorised as an authorised benchmark administrator under section 123K(1) or a person who was previously so exempt;
- (c) an authorised benchmark submitter or a person who was previously an authorised benchmark submitter;
- (d) a person that is exempt from the requirement to be authorised as an authorised benchmark submitter under section 123ZH(1) or a person who was previously so exempt;
- (e) a representative of an authorised benchmark administrator or a person that is exempt from the requirement to be authorised as an authorised benchmark administrator under

section 123K(1), or a person who was previously such a representative;

- (f) a representative of an authorised benchmark submitter, a person that is exempt from the requirement to be authorised as an authorised benchmark submitter under section 123ZH(1), or a designated benchmark submitter, or a person who was previously such a representative;
- (g) an officer of an authorised benchmark administrator or a person that is exempt from the requirement to be authorised as an authorised benchmark administrator under section 123K(1), or a person who was previously such an officer;
- (h) an officer of an authorised benchmark submitter, a person that is exempt from the requirement to be authorised as an authorised benchmark submitter under section 123ZH(1), or a designated benchmark submitter, or a person who was previously such an officer;
- (i) a person from whom any information or expression of opinion used in the determination of a designated benchmark was obtained; or
- (j) a person who has been convicted of an offence under this Part.

[4/2017]

(3) A prohibition order made under subsection (1) may do one or more of the following:

- (a) prohibit the person, whether permanently or for a specified period, from —
  - (i) carrying on a business of administering a designated benchmark, or performing the activity of administering a designated benchmark in specified circumstances or capacities;
  - (ii) carrying on a business or activity of providing information in relation to a designated benchmark or performing the activity of providing information

in relation to a designated benchmark in specified circumstances or capacities;

(iii) taking part, directly or indirectly, in the management of, acting as a director of, or becoming a substantial shareholder of —

(A) an authorised benchmark administrator;

(B) an exempt benchmark administrator;

(C) an authorised benchmark submitter;

(D) an exempt benchmark submitter; or

(E) a designated benchmark submitter;

(b) include a provision allowing the person, subject to any condition specified in the order —

(i) to do specified acts; or

(ii) to do specified acts in specified circumstances,

that the order would otherwise prohibit the person from doing.

[4/2017]

(4) The Authority must not make a prohibition order against a person without giving the person an opportunity to be heard.

[4/2017]

(5) Any person who is aggrieved by the decision of the Authority to make a prohibition order against the person may, within 30 days of the decision, appeal in writing to the Minister.

[4/2017]

(6) The Authority must keep, in such form as it thinks fit, records on persons against whom prohibition orders are made under this section.

[4/2017]

(7) The Authority may publish the records mentioned in subsection (6), or any part of them, in such manner as the Authority considers appropriate.

[4/2017]

**Effect of prohibition orders**

**123ZZD.**—(1) A person against whom a prohibition order is made must comply with the prohibition order.

[4/2017]

(2) Where a prohibition order is made against a person and notified to an authorised benchmark administrator or an exempt benchmark administrator, the authorised benchmark administrator or exempt benchmark administrator (as the case may be), must not employ the firstmentioned person to carry out the activity, or in connection with the activity, of administering a designated benchmark, or use the firstmentioned person's service, information or expressions of opinion, to the extent that this is prohibited by the order.

[4/2017]

(3) Where a prohibition order is made against a person and notified to an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter, the authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter (as the case may be) must not employ the firstmentioned person to carry out the activity, or in connection with the activity, of providing information in relation to a designated benchmark, use the firstmentioned person's service, or pass on the firstmentioned person's information or expressions of opinion, to the extent that this is prohibited by the order.

[4/2017]

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

(5) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

[4/2017]

**Variation or revocation of prohibition orders**

**123ZZE.**—(1) The Authority may vary or revoke a prohibition order, by giving written notice to the person against whom the order



was made, if the Authority is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Authority made the order.

[4/2017]

(2) The Authority may vary or revoke a prohibition order under subsection (1) —

- (a) on its own initiative; or
- (b) if the person against whom the order was made lodges with the Authority an application for the Authority to do so, accompanied by such documents and fee as may be prescribed by regulations made under section 123ZZA.

[4/2017]

(3) The Authority must not vary a prohibition order made against a person under subsection (2)(a) without giving the person an opportunity to be heard.

[4/2017]

(4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against the person under subsection (2)(a) may, within 30 days of the decision, appeal in writing to the Minister.

[4/2017]

### **Date and effect of prohibition orders**

**123ZZF.**—(1) A prohibition order, or any variation or revocation of a prohibition order, takes effect on the date specified in the order by the Authority, being a date not earlier than the date on which the order, or variation or revocation, is made.

[4/2017]

(2) A prohibition order does not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into by the person against whom the order is made, whether the agreement, transaction or arrangement was entered into before, on or after the issue of the prohibition order; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

[4/2017]

PART 6A  
REPORTING OF DERIVATIVES CONTRACTS

[34/2012]

**Interpretation of this Part**

**124.** In this Part, unless the context otherwise requires —

“market contract” means —

- (a) a contract subject to the business rules of an approved clearing house, or a recognised clearing house, that is entered into between the approved clearing house or recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the approved clearing house or recognised clearing house; or
- (b) a transaction which is being cleared or settled using the clearing facility of an approved clearing house or a recognised clearing house, and in accordance with the business rules of the approved clearing house or recognised clearing house, whether or not a novation referred to in paragraph (a) is to take place;

“specified derivatives contract” means any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by the Authority by regulations made under section 129 for the purposes of this definition;

“specified person” means —

- (a) any bank that is licensed under the Banking Act 1970;
- (b) any subsidiary of a bank incorporated in Singapore;
- (c) any merchant bank licensed under the Banking Act 1970;

- (d) any finance company licensed under the Finance Companies Act 1967;
- (e) any insurer licensed under the Insurance Act 1966;
- (f) [*Deleted by Act 4 of 2017*]
- (g) any holder of a capital markets services licence; or
- (h) any other person who is, or who belongs to a class of persons which is, prescribed by the Authority by regulations made under section 129 for the purposes of this definition.

[34/2012; 10/2013; 4/2017; 1/2020]

### **Reporting of specified derivatives contracts**

**125.**—(1) Every specified person who is a party to a specified derivatives contract must, at such time or times and in such form or manner as the Authority may prescribe by regulations made under section 129, report to a licensed trade repository or licensed foreign trade repository —

- (a) such information on the specified derivatives contract as the Authority may prescribe by those regulations; and
- (b) any amendment, modification, variation or change to the information referred to in paragraph (a).

[34/2012]

(2) Without affecting subsection (1), where the circumstances referred to in subsection (3) apply, a specified person who executes or causes to be executed a specified derivatives contract as an agent of a party to the specified derivatives contract must, at such time or times and in such form or manner as the Authority may prescribe by regulations made under section 129, report to a licensed trade repository or licensed foreign trade repository —

- (a) such information on the specified derivatives contract as the Authority may prescribe by those regulations; and
- (b) any amendment, modification, variation or change to the information referred to in paragraph (a).

[34/2012; 4/2017]

(3) For the purposes of subsection (2), the circumstances are that the party to the specified derivatives contract —

- (a) is not a specified person; or
- (b) is a specified person, but is exempted under section 129A from subsection (1).

[34/2012; 4/2017]

(4) A specified person who is required to comply with subsection (1) or (2) in relation to any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) is treated to have reported that information to a licensed trade repository or licensed foreign trade repository, if —

- (a) any other person has, with the consent or authority of the specified person, reported that information, in such form or manner prescribed by regulations made under section 129, to that licensed trade repository or licensed foreign trade repository; and
- (b) that information is true and correct and has been received by that licensed trade repository or licensed foreign trade repository.

[4/2017]

(5) A specified person who is treated under subsection (4) to have reported any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) to a licensed trade repository or licensed foreign trade repository, is treated to have so reported that information at the time that information is received by that licensed trade repository or licensed foreign trade repository.

[4/2017]

(6) A specified person who —

- (a) complies with subsection (1) or (2);
- (b) consents to or authorises the reporting of any information in connection with subsection (4); or

- (c) discloses any information in compliance with the foreign reporting obligations of such jurisdiction as may be prescribed by regulations made under section 129,

is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(7) Any specified person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(8) A specified person who is required under subsection (1) or (2) to report any information to a licensed trade repository or licensed foreign trade repository must use due care to ensure that the information reported is not false in any material particular.

[34/2012]

(9) Any specified person who contravenes subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[34/2012]

(10) Except where the parties to a specified derivatives contract have entered into an express agreement to the contrary, the specified derivatives contract is not, by reason only of a contravention of subsection (1), (2) or (8) in relation to the specified derivatives contract, voidable or void.

[34/2012]

(11) For the purposes of subsections (1)(a) and (2)(a), the information on a specified derivatives contract that the Authority may prescribe by regulations made under section 129 includes, but is not limited to —

- (a) the identities of the parties to the specified derivatives contract; and

- (b) the characteristics of the specified derivatives contract, including, but not limited to, operational data (such as clearing and settlement details), event data (such as execution time), underlying information and information on transaction economics (such as effective date and maturity date).

[34/2012]

(12) For the purposes of this section, where any right or obligation under a specified derivatives contract is transferred to any market contract, a reference to the specified derivatives contract includes a reference to that market contract.

[34/2012]

### **Power of Authority to obtain information**

**126.**—(1) The Authority may require any person to provide the Authority with such information or documents as the Authority considers necessary for determining —

- (a) whether any derivatives contract or class of derivatives contract should be prescribed for the purposes of the definition of “specified derivatives contract” in section 124;
- (b) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (h) of the definition of “specified person” in section 124; or
- (c) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any requirement that is, or that would otherwise have been, imposed under section 125(1) or (2).

[34/2012]

(2) Subject to subsections (4) and (5), a person must comply with every requirement imposed on the person under subsection (1).

[34/2012]

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not

exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(4) A person who complies with a requirement imposed under subsection (1) is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(5) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to provide any information on, or any document containing, any privileged communication made by or to him or her in that capacity.

[34/2012]

(6) Where a person claims, before providing the Authority with any information or documents that the person is required to provide under subsection (1)(c), that the information or documents might tend to incriminate the person, the information or documents —

- (a) are not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (3); but
- (b) are admissible in evidence for civil proceedings under Part 12.

[34/2012]

### **Directions on alternative reporting arrangements**

**127.**—(1) Where the Authority is of the opinion that any licensed trade repository or licensed foreign trade repository is not available for the reporting of, or is incapable of receiving, any information on any specified derivatives contract (including any amendment, modification, variation or change to that information) under section 125(1) or (2), the Authority may issue directions, whether of a general or specific nature, by written notice, to any specified person referred to in section 125(1) or (2) or class of such persons, requiring the specified person or class of such persons to do one or more of the following:

- (a) to maintain records of that information in such form or manner as the Authority may prescribe by regulations made under section 129;
- (b) to report that information, or submit records of that information, in such form or manner as the Authority may specify in that notice, at such frequency and over such period as the Authority may specify in that notice, to such person as the Authority may specify in that notice;
- (c) to give the Authority, or such person as the Authority may specify in that notice, access to that information, or to records of that information, in such manner as the Authority may specify in that notice.

[34/2012]

(2) A specified person referred to in subsection (1) must comply with every direction issued to the specified person under that subsection.

[34/2012]

(3) A specified person is treated to have complied with section 125(1) or (2) in relation to any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) if, while a direction issued to the specified person under subsection (1) remains in force, the specified person complies with that direction in relation to that information.

[34/2012; 4/2017]

(4) The Authority may cancel a direction issued under subsection (1) in relation to any licensed trade repository or licensed foreign trade repository, if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

[34/2012]

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to the specified person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every



day or part of a day during which the offence continues after conviction.

[34/2012]

(6) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

(7) For the purposes of this section, a reference to any information on a specified derivatives contract includes a reference to any such information which has previously been reported to a licensed trade repository or licensed foreign trade repository under section 125.

[34/2012]

### **Compliance with laws and practices of relevant reporting jurisdiction**

**128.**—(1) Subject to subsection (3), a specified person who is a party to a specified derivatives contract is treated to have complied with section 125(1) in relation to any information on the specified derivatives contract (including any amendment, modification, variation or change to that information), if —

- (a) any other party to the specified derivatives contract is incorporated, formed or established under the laws of, or has a place of business in, a relevant reporting jurisdiction; and
- (b) the specified person, or any other party to the specified derivatives contract, is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the reporting of specified derivatives contracts under the laws and practices of the relevant reporting jurisdiction.

[34/2012; 4/2017]

(2) Subject to subsection (3), a specified person who executes or causes to be executed a specified derivatives contract as an agent of a party to the specified derivatives contract (called in this subsection the principal party) is treated to have complied with section 125(2) in relation to any information on the specified derivatives contract (including any amendment, modification, variation or change to that information), if —

- (a) the principal party, or any other party to the specified derivatives contract, is incorporated, formed or established under the laws of, or has a place of business in, a relevant reporting jurisdiction; and
- (b) the principal party, or any other party to the specified derivatives contract, is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the reporting of specified derivatives contracts under the laws and practices of the relevant reporting jurisdiction.

[34/2012; 4/2017]

(3) Subsections (1) and (2) do not apply to any specified derivatives contract that is, or that belongs to a class of specified derivatives contracts that is, prescribed by the Authority by regulations made under section 129 for the purposes of this subsection.

[34/2012]

(4) In this section —

“place of business”, in relation to a party to a specified derivatives contract, means a head or main office, a branch, a representative office or any other office of the party;

“relevant reporting jurisdiction” means any foreign jurisdiction that is prescribed by the Authority by regulations made under section 129 for the purposes of this definition.

[34/2012]

### **Power of Authority to make regulations**

**129.**—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

[34/2012]

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of “specified derivatives contract” in section 124, the Authority may have regard to —

- (a) the significance of that derivatives contract or class of derivatives contracts in Singapore;

- (b) international developments in the reporting of derivatives contracts; and
- (c) any other matters that the Authority deems to be relevant.

[34/2012]

### **Exemption from section 125**

**129A.**—(1) Without affecting section 337(1), the Authority may, by regulations made under section 129, exempt any specified person or class of specified persons from all or any of the provisions of section 125, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) The Authority may, by written notice, exempt any specified person from all or any of the provisions of section 125, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012; 4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

(4) Every specified person that is granted an exemption under subsection (1) or (2) must satisfy every condition or restriction imposed on the specified person under the applicable subsection.

[34/2012]

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(5) Any specified person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

## PART 6B

## CLEARING OF DERIVATIVES CONTRACTS

[34/2012]

**Interpretation of this Part**

**129B.** In this Part, unless the context otherwise requires —

“clearing” means any arrangement, process, mechanism or service provided by a person in respect of transactions, by which parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;

“specified derivatives contract” means any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by the Authority by regulations made under section 129G for the purposes of this definition;

“specified person” means —

- (a) any bank that is licensed under the Banking Act 1970;
- (b) any merchant bank licensed under the Banking Act 1970;
- (c) any finance company licensed under the Finance Companies Act 1967;
- (d) any insurer licensed under the Insurance Act 1966;
- (e) [Deleted by Act 4 of 2017]
- (f) any holder of a capital markets services licence; or
- (g) any other person who is, or who belongs to a class of persons which is, prescribed by the Authority by regulations made under section 129G for the purposes of this definition.

[34/2012; 10/2013; 4/2017; 1/2020]

### Clearing of specified derivatives contracts

**129C.**—(1) Every specified person who is a party to a specified derivatives contract must, within such time as the Authority may prescribe by regulations made under section 129G, cause the specified derivatives contract to undergo clearing, by a clearing facility operated by an approved clearing house or a recognised clearing house, in accordance with the business rules of the approved clearing house or recognised clearing house, as the case may be.

[34/2012]

(2) Any specified person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(3) Except where the parties to a specified derivatives contract have entered into an express agreement to the contrary, the specified derivatives contract is not, by reason only of a contravention of subsection (1) in relation to the specified derivatives contract, voidable or void.

[34/2012]

### Power of Authority to obtain information

**129D.**—(1) The Authority may require any person to provide the Authority with such information or documents as the Authority considers necessary for determining —

- (a) whether any derivatives contract or class of derivatives contracts should be prescribed for the purposes of the definition of “specified derivatives contract” in section 129B;
- (b) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (g) of the definition of “specified person” in section 129B; or
- (c) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any

requirement that is, or that would otherwise have been, imposed under section 129C(1).

[34/2012]

(2) Subject to subsections (4) and (5), a person must comply with every requirement imposed on the person under subsection (1).

[34/2012]

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(4) A person who complies with a requirement imposed under subsection (1) is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(5) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to provide any information on, or any document containing, any privileged communication made by or to him or her in that capacity.

[34/2012]

(6) Where a person claims, before providing the Authority with any information or documents that the person is required to provide under subsection (1)(c), that the information or documents might tend to incriminate the person, the information or documents —

(a) are not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (3); but

(b) are admissible in evidence for civil proceedings under Part 12.

[34/2012]

**Directions on alternative clearing arrangements**

**129E.**—(1) Where the Authority is of the opinion that any clearing facility operated by any approved clearing house or recognised clearing house is not available for the clearing of, or is incapable of clearing, any specified derivatives contract or any class of specified derivatives contracts under section 129C(1), the Authority may issue directions, whether of a general or specific nature, by written notice, to any specified person who is a party to that specified derivatives contract, or any class of specified persons who are parties to that class of specified derivatives contracts, requiring the specified person or class of specified persons to cause that specified derivatives contract or that class of specified derivatives contracts to undergo clearing in the manner and within the time specified by the Authority in that notice.

[4/2017]

(2) A specified person referred to in subsection (1) must comply with every direction issued to the specified person under that subsection.

[34/2012]

(3) A specified person is treated to have complied with section 129C(1) in relation to a specified derivatives contract if, while a direction issued to the specified person under subsection (1) remains in force, the specified person complies with that direction in relation to that specified derivatives contract.

[34/2012; 4/2017]

(4) The Authority may cancel a direction issued under subsection (1) in relation to any clearing facility operated by any approved clearing house or recognised clearing house, if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

[34/2012]

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to the specified person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every

day or part of a day during which the offence continues after conviction.

[34/2012]

(6) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

### **Compliance with laws and practices of relevant clearing jurisdiction**

**129F.**—(1) Subject to subsection (2), a specified person who is a party to a specified derivatives contract is treated to have complied with section 129C(1) in relation to the specified derivatives contract, if —

- (a) any other party to the specified derivatives contract is incorporated, formed or established under the laws of, or has a place of business in, a relevant clearing jurisdiction; and
- (b) every party to the specified derivatives contract is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the clearing of specified derivatives contracts under the laws and practices of the relevant clearing jurisdiction.

[34/2012; 4/2017]

(2) Subsection (1) does not apply to any specified derivatives contract that is, or that belongs to a class of specified derivatives contracts that is, prescribed by the Authority by regulations made under section 129G for the purposes of this subsection.

[34/2012]

(3) In this section —

“place of business”, in relation to a party to a specified derivatives contract, means a head or main office, a branch, a representative office or any other office of the party;

“relevant clearing jurisdiction” means a foreign jurisdiction that is prescribed by the Authority by regulations made under section 129G for the purposes of this definition.

[34/2012]



**Power of Authority to make regulations**

**129G.**—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

[34/2012]

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of “specified derivatives contract” in section 129B, the Authority may have regard to —

- (a) the level of systemic risk posed by that derivatives contract or class of derivatives contracts;
- (b) the characteristics and level of standardisation of the contractual terms and operational processes relating to that derivatives contract or class of derivatives contracts;
- (c) the depth and liquidity of the market for that derivatives contract or class of derivatives contracts;
- (d) the availability of fair, reliable and generally accepted pricing sources for that derivatives contract or class of derivatives contracts;
- (e) the international regulatory approach towards that derivatives contract or class of derivatives contracts;
- (f) whether there is any anti-competitive effect associated with that derivatives contract or class of derivatives contracts;
- (g) the availability of approved clearing houses or recognised clearing houses that operate clearing facilities for the clearing of that derivatives contract or class of derivatives contracts; and
- (h) any other matters that the Authority deems to be relevant.

[34/2012]

**Exemption from section 129C**

**129H.**—(1) Without affecting section 337(1), the Authority may, by regulations made under section 129G, exempt any specified

person or class of specified persons from all or any of the provisions of section 129C, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(2) The Authority may, by written notice, exempt any specified person from all or any of the provisions of section 129C, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012; 4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[34/2012]

(4) Every specified person that is granted an exemption under subsection (1) or (2) must satisfy every condition or restriction imposed on the specified person under the applicable subsection.

[34/2012]

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(5) Any specified person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

## PART 6C

### TRADING OF DERIVATIVES CONTRACTS

[4/2017]

#### **Interpretation of this Part**

**129I.** In this Part, unless the context otherwise requires —

“specified derivatives contract” means any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by regulations made under section 129N for the purposes of this definition;

“specified person” means —

- (a) any bank that is licensed under the Banking Act 1970;
- (b) any merchant bank licensed under the Banking Act 1970;
- (c) any finance company licensed under the Finance Companies Act 1967;
- (d) any insurer licensed under the Insurance Act 1966;
- (e) any holder of a capital markets services licence; or
- (f) any other person who is, or who belongs to a class of persons which is, prescribed by regulations made under section 129N.

[4/2017; 1/2020]

### **Trading of specified derivatives contracts**

**129J.**—(1) Every specified person who executes a specified derivatives contract must do so —

- (a) on an organised market operated by an approved exchange or a recognised market operator, or on or through any other facility prescribed by regulations made under section 129N; and
- (b) in the form and manner prescribed by regulations made under that section.

[4/2017]

(2) Any specified person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

[4/2017]

(3) A failure to comply with subsection (1) does not of itself render the specified derivatives contract that is executed voidable or void.

[4/2017]

**Power of Authority to obtain information**

**129K.**—(1) The Authority may require any person to provide the Authority with such information or documents as the Authority considers necessary for determining —

- (a) whether any derivatives contract or class of derivatives contracts should be prescribed for the purposes of the definition of “specified derivatives contract” in section 129I;
- (b) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (f) of the definition of “specified person” in section 129I; or
- (c) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any requirement that is, or that would otherwise have been, imposed under section 129J(1).

[4/2017]

(2) Subject to subsections (4) and (5), a person must comply with every requirement imposed on the person under subsection (1).

[4/2017]

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(4) A person who complies with a requirement imposed under subsection (1) is not to be treated as being in breach of any restriction upon the disclosure of information imposed by written law, any rule of law, any contract or otherwise.

[4/2017]

(5) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to provide any information on, or any document containing, any privileged communication made by or to him or her in that capacity.

[4/2017]

(6) Where a person claims, before furnishing the Authority with any information or documents that the person is required to provide under subsection (1)(c), that the information or documents might tend to incriminate the person, the information or documents —

(a) are not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (3); but

(b) are admissible in evidence for civil proceedings under Part 12.

[4/2017]

### **Directions on alternative trading arrangements**

**129L.**—(1) Where the Authority is of the opinion that any organised market operated by any approved exchange or recognised market operator or any other facility prescribed for the purposes of section 129J(1) is not available for the execution of, or is incapable of executing, any specified derivatives contract under section 129J(1), the Authority may issue directions, whether of a general or specific nature, by written notice, to any specified person or to any class of such persons, requiring the specified person or class of such persons to, when executing any such specified derivatives contract, comply with the requirements specified in the notice relating to the form and manner in which the contract must be executed, and the time within which the contract must be executed.

[4/2017]

(2) A specified person mentioned in subsection (1) must comply with every direction issued to the specified person under that subsection.

[4/2017]

(3) A specified person is treated to have complied with section 129J(1) in relation to a specified derivatives contract if, while a direction issued to the specified person under subsection (1) remains in force, the specified person executes that specified derivatives contract in the form and manner and within the time specified by the Authority in that direction.

[4/2017]

(4) The Authority may cancel a direction issued under subsection (1) if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

[4/2017]

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to the specified person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

[4/2017]

(6) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[4/2017]

### **Compliance with laws and practices of relevant trading jurisdiction**

**129M.**—(1) Subject to subsection (2), a specified person is treated as having complied with section 129J(1) in relation to the specified derivatives contract if the specified person is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the execution of specified derivatives contracts under the laws and practices of the relevant trading jurisdiction.

[4/2017]

(2) Subsection (1) does not apply to any specified derivatives contract or any class of specified derivatives contracts prescribed by regulations made under section 129N.

[4/2017]

(3) In this section, “relevant trading jurisdiction” means a foreign jurisdiction that is prescribed by regulations made under section 129N.

[4/2017]

### **Power of Authority to make regulations**

**129N.**—(1) Without affecting section 341, the Authority may make regulations for the purposes of this Part.

[4/2017]

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of

“specified derivatives contract” in section 129I, the Authority may have regard to —

- (a) the level of systemic risk posed by that derivatives contract or class of derivatives contracts;
- (b) the characteristics and level of standardisation of the contractual terms and operational processes relating to that derivatives contract or class of derivatives contracts;
- (c) the depth and liquidity of the market for that derivatives contract or class of derivatives contracts;
- (d) the international regulatory approach towards that derivatives contract or class of derivatives contracts;
- (e) the types of persons that transact in that derivatives contract or class of derivatives contracts, and the purposes of transacting in that derivatives contract or class of derivatives contracts;
- (f) the availability of approved exchanges or recognised market operators that operate organised markets, and the availability of facilities prescribed pursuant to section 129J(1), for the trading of that derivatives contract or class of derivatives contracts;
- (g) whether there is any anti-competitive effect associated with that derivatives contract or class of derivatives contracts; and
- (h) any other matter that the Authority considers to be relevant.

[4/2017]

### **Exemption from section 129J**

**129O.**—(1) Despite section 337(1), the Authority may, by regulations made under section 129N, exempt any specified person or class of specified persons from section 129J, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(2) The Authority may, by written notice, exempt any specified person from section 129J, subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(3) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[4/2017]

(4) Every specified person that is exempted under subsection (1) or (2) must satisfy every condition or restriction imposed on the specified person under the applicable subsection.

[4/2017]

(5) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(6) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

## PART 7

### DISCLOSURE OF INTERESTS

#### *Division 1 — Disclosure of Interest in Corporation*

#### **Application and interpretation of this Division**

**130.**—(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

[2/2009]

(2) A reference to a corporation is a reference —

(a) to a company any or all of the shares in which are listed for quotation on the official list of an approved exchange; or

(b) to a corporation (not being a company, or a collective investment scheme constituted as a corporation) any or all of the shares in which are listed for quotation on the official



list of an approved exchange, such listing being a primary listing.

[2/2009; 4/2017]

(3) In relation to a corporation the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock is deemed to be an interest in an issued share in the corporation having attached to it the same rights as are attached to that stock.

[2/2009]

(4) A reference to a member —

(a) in relation to a company, means a person who is a member of the company under section 19(6) of the Companies Act 1967; and

(b) in relation to a corporation (other than a company), means any person equivalent to a member of a company.

[2/2009]

(5) To avoid doubt, section 4 applies for the purpose of determining whether a person has an interest in securities or securities-based derivatives contracts under this Division.

[35/2014; 4/2017]

(6) For the purposes of sections 133(3)(b)(i), 135(2)(b), 136(1), 137(1) and 137E(6), a person is conclusively presumed to have been aware of a fact or occurrence at a particular time —

(a) of which he or she would, if he had acted with reasonable diligence in the conduct of his or her affairs, have been aware at that time;

(b) where the person is a body corporate or unincorporated association (other than a partnership), of which its officer would, if he or she had acted with reasonable diligence in the conduct of its affairs, have been aware at that time;

(c) where the person is a limited liability partnership, of which its partner or manager would, if he or she had acted with reasonable diligence in the conduct of its affairs, have been aware at that time; or

- (d) where the person is a partnership, of which its partner would, if he or she had acted with reasonable diligence in the conduct of its affairs, have been aware at that time.

[2/2009]

(7) In this section —

“officer” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association, or a person holding a position analogous to that of president, secretary or member of the committee, and includes a person purporting to act in such capacity;

“partner” includes a person purporting to act as a partner.

[2/2009]

### **Persons obliged to comply with this Division and power of Authority to grant exemption or extension**

**131.**—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[2/2009]

(2) This Division extends to acts done or omitted to be done outside Singapore.

[2/2009]

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

[2/2009]

(4) The Authority may by written notice impose on a person exempted under subsection (3), or by regulations impose on a class of

persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons must comply with such conditions or restrictions.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) The Authority may, on the application of a person required to give a notice under this Division, extend, or further extend, the time for giving the notice.

[2/2009]

### **Authority may extend scope of Division in certain circumstances**

**132.** The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

- (a) to any person or class of persons, other than the persons to which this Division applies;
- (aa) to any securities or securities-based derivatives contracts, or class of securities or securities-based derivatives contracts, other than the securities or securities-based derivatives contracts to which this Division applies;
- (ab) to any interests in securities or securities-based derivatives contracts, or class of interests in securities or securities-based derivatives contracts, other than the interests in securities or securities-based derivatives contracts to which this Division applies; or

(b) to require the disclosure of interests in any entity, arrangement or trust other than a corporation, and the provisions of this Division apply accordingly.

[2/2009; 4/2017]

*Subdivision (1) — Disclosure by directors and chief executive officer of corporation*

**Duty of director or chief executive officer to notify corporation of his or her interests**

**133.**—(1) Every director and chief executive officer of a corporation must give written notice to the corporation of particulars of —

- (a) shares in —
  - (i) the corporation; or
  - (ii) a related corporation of the corporation, which he or she holds, or in which he or she has an interest and the nature and extent of that interest;
- (b) debentures of —
  - (i) the corporation; or
  - (ii) a related corporation of the corporation, which he or she holds, or in which he or she has an interest and the nature and extent of that interest;
- (c) his or her rights or options, or rights or options of his or hers and another person or other persons, in respect of the acquisition or disposal of shares in or debentures of —
  - (i) the corporation; or
  - (ii) a related corporation of the corporation;
- (d) contracts to which he or she is a party, or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in —
  - (i) the corporation; or

- (ii) a related corporation of the corporation;
- (e) participatory interests made available by —
  - (i) the corporation; or
  - (ii) a related corporation of the corporation, which he or she holds, or in which he or she has an interest and the nature and extent of that interest;
- (f) such other securities or securities-based derivatives contracts as the Authority may prescribe, which are held, whether directly or indirectly, by him or her, or in which he or she has an interest and the nature and extent of that interest; and
- (g) any change in respect of the particulars of any matter referred to in paragraphs (a) to (f).

[2/2009; 4/2017]

(2) Paragraphs (a)(ii), (b)(ii), (c)(ii), (d)(ii), (e) and (g) (in respect of a change in the particulars of any matter referred to in paragraphs (a)(ii), (b)(ii), (c)(ii), (d)(ii) and (e)) of subsection (1) only apply to a director of a corporation which is a company.

[2/2009]

- (3) A notice under subsection (1) —
- (a) must be in such form and must contain such information as the Authority may prescribe; and
  - (b) must be given —
    - (i) in the case of a notice under subsection (1)(g), within 2 business days after the director or chief executive officer becomes aware of the change; or
    - (ii) in any other case, within 2 business days after —
      - (A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the shares, debentures, rights, options, contracts, participatory interests, other securities or securities-based derivatives contracts referred to in subsection (1),

whichever last occurs.

[2/2009; 4/2017]

(4) For the purposes of this section —

- (a) a director or chief executive officer of a corporation is deemed to have an interest in securities or securities-based derivatives contracts referred to in subsection (1) if a family member of the director or chief executive officer (not being himself or herself a director or chief executive officer of the corporation) (as the case may be) holds or has an interest in those securities or securities-based derivatives contracts; and
- (b) any contract entered into by, any assignment or right of subscription made or exercised by, or any grant made to, a family member of a director or chief executive officer of a corporation (not being himself or herself a director or chief executive officer of the corporation) is deemed to have been entered into by, made or exercised by or made to the director or chief executive officer.

[2/2009; 4/2017]

(5) In this section —

- (a) a reference to a participatory interest is a reference to a unit in a collective investment scheme; and
- (b) a reference to a person who holds or acquires participatory interests, other securities or securities-based derivatives contracts referred to in subsection (1), or an interest in shares, debentures, participatory interests, other securities or securities-based derivatives contracts referred to in that subsection, includes a reference to a person who under an option holds or acquires a right to acquire or dispose of the

participatory interests, securities or securities-based derivatives contracts, or the interest in shares, debentures, participatory interests, securities or securities-based derivatives contracts.

[2/2009; 4/2017]

(6) In this section, “family member” means a spouse, or a son, adopted son, stepson, daughter, adopted daughter or stepdaughter below the age of 21 years.

[2/2009]

### **Penalties under this Subdivision**

**134.**—(1) Any director or chief executive officer of a corporation who —

- (a) intentionally or recklessly contravenes section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) or (f), or section 133(1)(g) in respect of a change in the particulars of any matter referred to in section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) and (f);
- (b) intentionally or recklessly contravenes section 133(3) in respect of a notice of the particulars of any matter referred to in section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) and (f) or of a change in any of those particulars; or
- (c) in purported compliance with section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) or (f), or section 133(1)(g) in respect of a change in the particulars of any matter referred to in section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) and (f), provides any information which he or she knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

- (2) Any director or chief executive officer of a corporation who —
- (a) contravenes section 133(1) or (3); or
  - (b) in purported compliance with section 133, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

- (3) No proceedings shall be instituted against a person for an offence under this section after —
- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
  - (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Subdivision (2) — Disclosure by substantial shareholders  
in corporation*

**Duty of substantial shareholder to notify corporation of interests**

**135.**—(1) A person who is or (if the person has ceased to be one) had been a substantial shareholder in a corporation must give written notice to the corporation of particulars of the voting shares in the corporation in which the person has or had an interest or interests and the nature and extent of that interest or those interests.

[2/2009]

- (2) A notice under subsection (1) —
- (a) must be in such form and must contain such information as the Authority may prescribe;



- (b) must be given within 2 business days after the person becomes aware that the person is or (if the person has ceased to be one) had been a substantial shareholder; and
- (c) must be given even though the person has ceased to be a substantial shareholder before the expiration of the period referred to in paragraph (b).

[2/2009]

### **Duty of substantial shareholder to notify corporation of change in interests**

**136.**—(1) Where there is a change in the percentage level of the interest or interests of a substantial shareholder in a corporation in voting shares in the corporation, the substantial shareholder must give written notice to the corporation within 2 business days after the substantial shareholder becomes aware of the change.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

(3) In subsection (1), “percentage level”, in relation to a substantial shareholder in a corporation, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

- (a) all the voting shares (excluding treasury shares) in the corporation; or
- (b) where the share capital of the corporation is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

[2/2009]

**Duty of person who ceases to be substantial shareholder to notify corporation**

**137.**—(1) A person who ceases to be a substantial shareholder in a corporation must give written notice to the corporation within 2 business days after the person becomes aware that the person has ceased to be a substantial shareholder.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

**Beneficial owner to ensure notification by person who holds, acquires or disposes of interests on beneficial owner's behalf**

**137A.** Where a person (*A*) authorises another person (*B*) to hold, acquire or dispose of, on *A*'s behalf, voting shares or an interest or interests in voting shares in a corporation, *A* must take reasonable steps to ensure that *B* notifies *A* as soon as practicable and, in any case, no later than 2 business days after any acquisition or disposal of any of those voting shares or interest or interests in voting shares effected by *B* on *A*'s behalf which will or may give rise to any duty on the part of *A* to give notice under this Subdivision.

[2/2009]

**Notification by person who holds, acquires or disposes of interests for benefit of another person**

**137B.** Where a person (*A*) holds voting shares in a corporation, being voting shares in which another person (*B*) has an interest, *A* must give to *B* a notice of any acquisition or disposal of any of those shares effected by *A*, in such form as the Authority may prescribe, as soon as practicable and, in any case, no later than 2 business days after acquiring or disposing of the shares.

[2/2009]

**Corporation to keep register of substantial shareholders**

**137C.**—(1) A corporation must keep a register in which it must immediately enter —

- (a) the names of persons from whom it has received a notice under section 135; and

- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137, the information given in that notice.

[2/2009]

(2) The corporation must keep the register at its registered office or, if the corporation does not have a registered office, at its principal place of business in Singapore and the register must be open for inspection by a member of the corporation without charge, and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the corporation requires.

[2/2009]

(3) A person may request the corporation to provide the person with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the corporation requires for every page or part thereof required to be copied, and the corporation must send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the corporation received the request.

[2/2009]

(4) The Authority may at any time in writing require the corporation to provide it with a copy of the register or any part of the register and the corporation must send the copy to the Authority within 7 days after the day on which the corporation received the requirement.

[2/2009]

(5) Any corporation which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) A corporation is not, by reason of anything done under this Subdivision —

- (a) to be taken for any purpose of the Companies Act 1967 to have notice of; or

(b) to be put upon inquiry as to,  
a right of a person to or in relation to a share in the corporation.

[2/2009]

### **Penalties under this Subdivision**

**137D.**—(1) Any person who —

- (a) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B; or
- (b) in purported compliance with section 135, 136, 137 or 137B, provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

- (c) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction; or
- (d) in the case of a corporation, be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any person who —

- (a) contravenes section 135, 136(1) or (2), 137, 137A or 137B; or
- (b) in purported compliance with section 135, 136, 137 or 137B, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not

exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

### **Powers of court with respect to non-compliance by substantial shareholders**

**137E.**—(1) Where a person is or has been a substantial shareholder in a corporation and has failed to comply with section 135, 136 or 137, a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

- (a) an order restraining the person who is or has been a substantial shareholder from disposing of any interest in shares in the corporation in which that person is or has been a substantial shareholder;
- (b) an order restraining a person who is, or is entitled to be the holder of the shares referred to in paragraph (a) from disposing of any interest in those shares;
- (c) an order restraining the exercise by any person of any voting or other rights attached to any share in the corporation in which the substantial shareholder has or has had an interest;
- (d) an order directing the corporation not to make payment, or to defer making payment, of any sum due from the corporation in respect of any share in which the substantial shareholder has or has had an interest;

- (e) an order directing the sale of any or all of the shares in the corporation in which the substantial shareholder has or has had an interest;
- (f) an order directing the corporation not to register or cause to be registered in the register of members the transfer or transmission of shares specified by the court;
- (g) an order directing the Depository (within the meaning of section 81SF) or any depository corporation not to register or cause to be registered the transfer or transmission of any shares or interest in shares in the corporation specified by the court;
- (h) an order that any exercise by any person of the voting or other rights attached to shares in the corporation specified by the court in which the substantial shareholder has or has had an interest be disregarded;
- (i) for the purposes of securing compliance with any other order made under this section, an order directing the corporation or any other person to do or refrain from doing an act specified by the court.

[2/2009; 35/2014]

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

[2/2009]

(3) An order made under this section directing the sale of any share may provide that the sale is to be made within such time and subject to such conditions (if any) as the court thinks fit, including, if the court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the corporation.

[2/2009]

(4) Where a share is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold share is to vest in.

[2/2009]

(5) The court, before making an order under this section and in determining the terms of such an order, is to satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

[2/2009]

(6) The court is not to make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the person who is or has been a substantial shareholder to comply as mentioned in subsection (1) was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

[2/2009]

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

[2/2009]

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[2/2009]

(9) Any person who contravenes an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

[2/2009]

**Power of corporation to require disclosure of beneficial interest in its voting shares**

**137F.**—(1) Any corporation may by written notice require any member of the corporation within such reasonable time as is specified in the notice —

- (a) to inform it whether the member holds any voting shares in the corporation as beneficial owner or as trustee; and
- (b) if the member holds them as trustee, to indicate so far as the member can the persons for whom the member holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

[2/2009]

(2) Where a corporation is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting shares in the corporation, the corporation may by written notice require that other person within such reasonable time as is specified in the notice —

- (a) to inform it whether that other person holds that interest as beneficial owner or as trustee; and
- (b) if that other person holds it as trustee, to indicate so far as that other person can the persons for whom that other person holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

[2/2009]

(3) Any corporation may by written notice require any member of the corporation to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting shares in the corporation held by the member are the subject of an agreement or arrangement under which another person is entitled to control the member's exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

[2/2009]

(4) The notice referred to in subsection (1), (2) or (3) must contain such other information as the Authority may prescribe, and the



delivery of such notice must comply with such requirements as the Authority may prescribe.

[2/2009]

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) must comply with that notice.

[2/2009]

(6) Whenever a corporation receives information from a person pursuant to a requirement imposed on the person under this section with respect to shares held by a member of the corporation, it is under an obligation to inscribe against the name of that member in a separate part of the register kept by it under section 137C —

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information received pursuant to the requirement.

[2/2009]

(7) Section 137C applies in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

[2/2009]

(8) Any person who —

(a) intentionally or recklessly contravenes subsection (5); or

(b) in purported compliance with subsection (5), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(c) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction; or

(d) in the case of a corporation, be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every

day or part of a day during which the offence continues after conviction.

[2/2009]

(9) Any person who —

- (a) contravenes subsection (5); or
- (b) in purported compliance with subsection (5), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) A person shall not be guilty of an offence under subsection (8)(a) or (9)(a) if the person proves that the information in question was already in the possession of the corporation or that the requirement to give it was for any other reason frivolous or vexatious.

[2/2009]

(11) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Subdivision (3) — Disclosure by corporation***Duty of corporation to make disclosure**

**137G.**—(1) Where a corporation has been notified in writing by —

- (a) a director or chief executive officer of the corporation pursuant to a requirement imposed on him or her under section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) or (f), or under section 133(1)(g) in respect of a change in the particulars of any matter referred to in section 133(1)(a)(i), (b)(i), (c)(i), (d)(i) and (f); or
- (b) a substantial shareholder in the corporation pursuant to a requirement imposed on the substantial shareholder under section 135, 136 or 137,

the corporation must announce or otherwise disseminate the information stated in the notice to the organised market operated by the approved exchange on whose official list any or all of the shares of the corporation are listed, as soon as practicable and in any case, no later than the end of the business day following the day on which the corporation received the notice.

[2/2009; 4/2017]

(2) The corporation must announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

[2/2009]

(3) Any corporation that —

- (a) intentionally or recklessly contravenes subsection (1) or (2); or
- (b) in purported compliance with this section, announces or disseminates any information knowing that it is false or misleading in a material particular or reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) Any corporation that —

- (a) contravenes subsection (1) or (2); or
- (b) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Where an offence has been committed by a corporation under subsection (3) or (4), any officer of the corporation who —

- (a) causes the corporation to contravene subsection (1);
- (b) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or
- (c) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

must —

- (d) if he or she had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (e) if he or she had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

[2/2009]

(6) In this section, “officer” means a director, member of the committee of management, chief executive officer, manager,

secretary or other similar officer of the corporation, and includes a person purporting to act in any such capacity.

[2/2009]

(7) No proceedings shall be instituted against a person for an offence under this section after —

(a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Division 2 — Disclosure of Interest in Business Trust and Interest in Trustee-Manager of Business Trust*

**Application and interpretation of this Division**

**137H.**—(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

[2/2009]

(2) A reference to a registered business trust is a reference to a registered business trust any or all of the units in which are listed for quotation on the official list of an approved exchange.

[2/2009; 4/2017]

(3) A reference to a recognised business trust is a reference to a recognised business trust any or all of the units in which are listed for quotation on the official list of an approved exchange, such listing being a primary listing.

[2/2009; 4/2017]

(4) To avoid doubt, section 4 applies for the purpose of determining whether a person has an interest in securities or securities-based derivatives contracts under this Division.

[35/2014; 4/2017]

(5) Section 130(6) and (7) applies for the purposes of —

(a) sections 135(2)(b), 136(1) and 137(1) as applied by section 137J(1); and

(b) sections 137L(6), 137N(2)(b)(i), 137P(1) and 137R(1), as they apply for the purposes of sections 133(3)(b)(i), 135(2)(b), 136(1), 137(1) and 137E(6).

[2/2009]

**Persons obliged to comply with this Division and power of Authority to grant exemption or extension**

**137L.**—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[2/2009]

(2) This Division extends to acts done or omitted to be done outside Singapore.

[2/2009]

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

[2/2009]

(4) The Authority may by written notice impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons must comply with such conditions or restrictions.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) The Authority may, on the application of a person required to give a notice under this Division, extend, or further extend, the time for giving the notice.

[2/2009]

**Authority may extend scope of Division in certain circumstances**

**137IA.** The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

- (a) to any person or class of persons, other than the persons to which this Division applies;
- (b) to any securities or securities-based derivatives contracts, or class of securities or securities-based derivatives contracts, other than the securities or securities-based derivatives contracts to which this Division applies;
- (c) to any interests in securities or securities-based derivatives contracts, or class of interests in securities or securities-based derivatives contracts, other than the interests in securities or securities-based derivatives contracts to which this Division applies; or
- (d) to require the disclosure of interests in any entity, arrangement or trust other than a business trust or a trustee-manager of a business trust,

and the provisions of this Division apply accordingly.

[4/2017]

*Subdivision (1) — Disclosure by substantial unitholders of business trust*

**Duty of substantial unitholder to notify trustee-manager of interests**

**137J.**—(1) Sections 135 to 137B apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder of a registered business trust or recognised business trust as though —

- (a) references to the corporation to which notification should be given were references to the trustee-manager of the business trust;

- (b) references to shares or voting shares in the corporation were references to units or voting units in the business trust; and
- (c) references to a substantial shareholder in the corporation were references to a substantial unitholder of the business trust,

and such person must comply with those provisions accordingly.

[2/2009]

(2) Any person to whom subsection (1) applies who —

- (a) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or
- (b) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

- (c) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction; or
- (d) in the case of a corporation, be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) Any person to whom subsection (1) applies who —

- (a) contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or



- (b) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

### **Trustee-manager to keep register of substantial unitholders**

**137K.**—(1) The trustee-manager of a registered business trust or recognised business trust must keep a register in which it must immediately enter —

- (a) the names of persons from whom it has received a notice under section 135 as applied by section 137J(1); and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137 as applied by section 137J(1), the information given in that notice.

[2/2009]

(2) The trustee-manager must keep the register at its registered office or, if the trustee-manager does not have a registered office, at its principal place of business in Singapore, and the register must be open for inspection by a unitholder of the business trust without

charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the trustee-manager requires.

[2/2009]

(3) A person may request the trustee-manager to provide the person with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the trustee-manager requires for every page or part thereof required to be copied, and the trustee-manager must send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the trustee-manager received the request.

[2/2009]

(4) The Authority may at any time in writing require the trustee-manager to provide it with a copy of the register or any part of the register and the trustee-manager must send the copy to the Authority within 7 days after the day on which the trustee-manager received the requirement.

[2/2009]

(5) Any trustee-manager which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

### **Powers of court with respect to non-compliance by substantial unitholders**

**137L.**—(1) Where a person is or has been a substantial unitholder of a registered business trust or recognised business trust and has failed to comply with section 135, 136 or 137 as applied by section 137J(1), a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

- (a) an order restraining the person from disposing of any interest in units in the business trust of which the person is or has been a substantial unitholder;

- (b) an order restraining a person who is, or is entitled to be, the holder of the units referred to in paragraph (a) from disposing of any interest in those units;
- (c) an order restraining the exercise by any person of any voting or other rights attached to any unit in the business trust in which the substantial unitholder has or has had an interest;
- (d) an order directing the trustee-manager of the business trust not to make payment, or to defer making payment, out of the property of the business trust of any sum due in respect of any unit in which the substantial unitholder has or has had an interest;
- (e) an order directing the sale of any or all of the units in the business trust in which the substantial unitholder has or has had an interest;
- (f) an order directing the trustee-manager of the business trust not to register or cause to be registered in the register of unitholders the transfer or transmission of units specified by the court;
- (g) an order directing the Depository (within the meaning of section 81SF) or any depository corporation not to register or cause to be registered the transfer or transmission of any units or interest in units in the business trust specified by the court;
- (h) an order that any exercise by any person of the voting or other rights attached to units in the business trust specified by the court in which the substantial unitholder has or has had an interest be disregarded;
- (i) for the purposes of securing compliance with any other order made under this section, an order directing the trustee-manager of the business trust or any other person to do or refrain from doing an act specified by the court.

[2/2009; 35/2014]

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

[2/2009]

(3) An order made under this section directing the sale of any unit may provide that the sale is to be made within such time and subject to such conditions (if any) as the court thinks fit, including, if the court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial unitholder of the business trust.

[2/2009]

(4) Where a unit is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold unit is to vest in.

[2/2009]

(5) The court, before making an order under this section and in determining the terms of such an order, is to satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

[2/2009]

(6) The court is not to make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the person who is or has been a substantial unitholder to comply as mentioned in subsection (1) was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

[2/2009]

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

[2/2009]

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[2/2009]

(9) Any person who contravenes an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

[2/2009]

### **Power of trustee-manager to require disclosure of beneficial interest in voting units**

**137M.**—(1) The trustee-manager of a registered business trust or recognised business trust may by written notice require any unitholder of the business trust within such reasonable time as is specified in the notice —

- (a) to inform it whether the unitholder holds any voting units in the business trust as beneficial owner or as trustee; and
- (b) if the unitholder holds them as trustee, to indicate so far as the unitholder can the persons for whom the unitholder holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

[2/2009]

(2) Where the trustee-manager of a registered business trust or recognised business trust is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting units in the business trust, the trustee-manager may by written notice require that other person within such reasonable time as is specified in the notice —

- (a) to inform it whether that other person holds that interest as beneficial owner or as trustee; and
- (b) if that other person holds it as trustee, to indicate so far as that other person can the persons for whom that other person holds it (either by name or by other particulars

sufficient to enable them to be identified) and the nature of their interest.

[2/2009]

(3) The trustee-manager of a registered business trust or recognised business trust may by written notice require any unitholder of the business trust to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the business trust held by the unitholder are the subject of an agreement or arrangement under which another person is entitled to control the unitholder's exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

[2/2009]

(4) The notice referred to in subsection (1), (2) or (3) must contain such other information as the Authority may prescribe, and the delivery of such notice must comply with such requirements as the Authority may prescribe.

[2/2009]

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) must comply with that notice.

[2/2009]

(6) Whenever the trustee-manager of a registered business trust or recognised business trust receives information from a person pursuant to a requirement imposed on the person under this section with respect to units held by a unitholder of the business trust, it is under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137K —

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information received pursuant to the requirement.

[2/2009]

(7) Section 137K applies in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

[2/2009]

(8) Any person who —

- (a) intentionally or recklessly contravenes subsection (5); or
- (b) in purported compliance with subsection (5), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

- (c) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction; or
- (d) in the case of a corporation, be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(9) Any person who —

- (a) contravenes subsection (5); or
- (b) in purported compliance with subsection (5), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) A person shall not be guilty of an offence under subsection (8)(a) or (9)(a) if the person proves that the information in question was already in the possession of the trustee-manager of the registered business trust or recognised business trust, or that the requirement to give it was for any other reason frivolous or vexatious.

[2/2009]

(11) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Subdivision (2) — Disclosure by directors and chief executive officer of trustee-manager of business trust*

**Duty of director and chief executive officer of trustee-manager to notify of interests**

**137N.**—(1) Every director and chief executive officer of the trustee-manager of a registered business trust or recognised business trust must give written notice to the trustee-manager of particulars of —

- (a) units or derivatives of units in the business trust, being units or derivatives of units held by him or her, or in which he or she has an interest and the nature and extent of that interest;
- (b) debentures or units of debentures of the business trust which are held by him or her, or in which he or she has an interest and the nature and extent of that interest;
- (c) such other securities or securities-based derivatives contracts as the Authority may prescribe which are held, whether directly or indirectly, by him or her, or in which he or she has an interest and the nature and extent of that interest; and
- (d) any change in respect of the particulars of any matter referred to in paragraphs (a), (b) and (c).

[2/2009; 4/2017]



(2) A notice under subsection (1) —

(a) must be in such form and must contain such information as the Authority may prescribe; and

(b) must be given —

(i) in the case of a notice under subsection (1)(d), within 2 business days after the director or chief executive officer becomes aware of the change; or

(ii) in any other case, within 2 business days after —

(A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the units, derivatives of units, debentures, units of debentures, other securities or securities-based derivatives contracts referred to in subsection (1),

whichever last occurs.

*[2/2009; 4/2017]*

(3) For the purposes of this section, a director or chief executive officer of a trustee-manager is deemed to have an interest in securities or securities-based derivatives contracts referred to in subsection (1) if a family member of the director or chief executive officer (not being himself or herself a director or chief executive officer of the trustee-manager) (as the case may be) has an interest in those securities or securities-based derivatives contracts.

*[2/2009; 4/2017]*

(4) In this section —

“family member” means a spouse, or a son, adopted son, stepson, daughter, adopted daughter or stepdaughter below the age of 21 years;

“unit”, in relation to a debenture, means any right or interest, whether legal or equitable, in the debenture, by whatever

name called, and includes any option to acquire any such right or interest in the debenture.

[2/2009]

### **Penalties under this Subdivision**

**137O.**—(1) Any director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust who —

- (a) intentionally or recklessly contravenes section 137N(1) or (2); or
- (b) in purported compliance with section 137N, provides any information which he or she knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any director or chief executive officer of the trustee-manager of a registered business trust or recognised business trust who —

- (a) contravenes section 137N(1) or (2); or
- (b) in purported compliance with section 137N, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Subdivision (3) — Disclosure by holders of voting shares in trustee-manager*

**Duty of holders of voting shares in trustee-manager to notify trustee-manager**

**137P.**—(1) Where the percentage of interest of a person in the voting shares in a trustee-manager of a registered business trust or recognised business trust reaches, crosses or falls below 15%, 30%, 50% or 75%, the person must give written notice to the trustee-manager within 2 business days after the person becomes aware of this.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

(3) In subsection (1), the percentage of interest of a person in the voting shares in a trustee-manager of a registered business trust or recognised business trust is ascertained by expressing the total votes attached to all the voting shares in which the person has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

- (a) all the voting shares (excluding treasury shares) in the trustee-manager; or

(b) where the share capital of the trustee-manager is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned, and, if it is not a whole number, rounding that figure down to the next whole number.

[2/2009]

### **Penalties under this Subdivision**

**137Q.**—(1) Any person who —

- (a) intentionally or recklessly contravenes section 137P(1) or (2); or
- (b) in purported compliance with section 137P, provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

- (c) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction; or
- (d) in the case of a corporation, be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any person who —

- (a) contravenes section 137P(1) or (2); or
- (b) in purported compliance with section 137P, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

\$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Subdivision (4) — Disclosure by trustee-manager*

**Duty of trustee-manager of business trust to make disclosure**

**137R.**—(1) Where the trustee-manager of a registered business trust or recognised business trust —

- (a) acquires or disposes of interests in units or derivatives of units in, or debentures or units of debentures of, the business trust;
- (aa) acquires or disposes of interests in such securities or securities-based derivatives contracts of the business trust as may be prescribed by regulations made under section 341; or
- (b) has been notified in writing by —
  - (i) a substantial unitholder of the business trust pursuant to a requirement imposed on the substantial unitholder under section 135, 136 or 137 as applied by section 137J(1);
  - (ii) a director or chief executive officer of the trustee-manager pursuant to a requirement imposed on him or her under section 137N; or

- (iii) a person who holds an interest or interests in voting shares in the trustee-manager pursuant to a requirement imposed on the person under section 137P,

the trustee-manager must announce or otherwise disseminate the particulars of the acquisition or disposal, or the information stated in the notice it received (as the case may be) to the organised market operated by the approved exchange on whose official list any or all of the units in the business trust are listed, as soon as practicable and in any case no later than the end of the business day following the day on which the trustee-manager became aware of the acquisition or disposal, or received the notice.

[2/2009; 4/2017]

(2) The trustee-manager must announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

[2/2009]

(3) Any trustee-manager of a registered business trust or recognised business trust that —

- (a) intentionally or recklessly contravenes subsection (1) or (2); or
- (b) in purported compliance with this section, announces or disseminates any information which the trustee-manager knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) Any trustee-manager of a registered business trust or recognised business trust that —

- (a) contravenes subsection (1) or (2); or

- (b) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Where an offence has been committed by a trustee-manager under subsection (3) or (4), any officer of the trustee-manager who —

- (a) causes the trustee-manager to contravene subsection (1);
- (b) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or
- (c) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

- (d) if he or she had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (e) if he or she had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

[2/2009]

(6) In this section, “officer” means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the trustee-manager, and includes a person purporting to act in any such capacity.

[2/2009]

(7) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Division 3 — Disclosure of Interests in Real Estate Investment Trust and Interests in Shares of Responsible Person*

**Application and interpretation of this Division**

**137S.**—(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

[2/2009]

(2) In this Division —

“real estate investment trust” means a collective investment scheme that is a trust, that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes, and any or all the units in which are listed, by way of a primary listing, for quotation on the official list of an approved exchange;

“trustee” means —

- (a) in relation to a real estate investment trust authorised under section 286, the trustee approved under section 289 for the trust; and
- (b) in relation to any other real estate investment trust, an entity equivalent to a trustee referred to in paragraph (a).

[2/2009; 4/2017]

(3) To avoid doubt, section 4 applies for the purpose of determining whether a person has an interest in securities, securities-based



derivatives contracts or units in a collective investment scheme under this Division.

[35/2014; 4/2017]

(4) Section 130(6) and (7) applies for the purposes of —

(a) sections 135(2)(b), 136(1) and 137(1) as applied by section 137U(1); and

(b) sections 137W(6), 137Y(2)(b)(i), 137ZA(1) and 137ZC(1),

as they apply for the purposes of sections 133(3)(b)(i), 135(2)(b), 136(1), 137(1) and 137E(6).

[2/2009]

### **Persons obliged to comply with Division and power of Authority to grant exemption or extension**

**137T.**—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[2/2009]

(2) This Division extends to acts done or omitted to be done outside Singapore.

[2/2009]

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

[2/2009]

(4) The Authority may by written notice impose on a person exempted under subsection (3), or by regulations impose on a class of persons exempted under that subsection, such conditions or restrictions as the Authority thinks fit and the person or persons must comply with such conditions or restrictions.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding

\$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) The Authority may, on the application of a person required to give a notice under this Division, extend, or further extend, the time for giving the notice.

[2/2009]

### **Authority may extend scope of Division in certain circumstances**

**137TA.** The Authority may, if it thinks it is necessary in the interests of the public or a section of the public, to protect investors, or to enhance market transparency, by regulations extend, with or without modifications or adaptations, the provisions of this Division —

- (a) to any person or class of persons, other than the persons to which this Division applies;
- (b) to any securities, securities-based derivatives contracts or units in a collective investment scheme, or class of securities, securities-based derivatives contracts or units in a collective investment scheme, other than the securities, securities-based derivatives contracts or units in a collective investment scheme to which this Division applies;
- (c) to any interests in securities, securities-based derivatives contracts or units in a collective investment scheme, or class of interests in securities, securities-based derivatives contracts or units in a collective investment scheme, other than the interests in securities, securities-based derivatives contracts or units in a collective investment scheme to which this Division applies; or

- (d) to require the disclosure of interests in any entity, arrangement or trust other than a real estate investment trust or a responsible person for a real estate investment trust,

and the provisions of this Division apply accordingly.

[4/2017]

*Subdivision (1) — Disclosure by substantial unitholders of real estate investment trust*

**Duty of substantial unitholder to notify trustee and responsible person of interests**

**137U.**—(1) Sections 135 to 137B apply, with such modifications and qualifications as may be necessary, to a person who is a substantial unitholder of a real estate investment trust as though —

- (a) references to the corporation to which notification should be given were references to —
  - (i) the trustee of the real estate investment trust; and
  - (ii) the responsible person for the real estate investment trust;
- (b) references to shares or voting shares in the corporation were references to units or voting units in the real estate investment trust; and
- (c) references to a substantial shareholder in the corporation were references to a substantial unitholder of the real estate investment trust,

and such person must comply with those provisions accordingly.

[2/2009]

- (2) Any person to whom subsection (1) applies who —
  - (a) intentionally or recklessly contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or

- (b) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

- (c) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction; or
- (d) in the case of a corporation, be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) Any person to whom subsection (1) applies who —

- (a) contravenes section 135, 136(1) or (2), 137, 137A or 137B as applied by subsection (1); or
- (b) in purported compliance with section 135, 136, 137 or 137B as applied by subsection (1), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

### **Trustee to keep register of substantial unitholders**

**137V.**—(1) The trustee of a real estate investment trust must keep a register in which it must immediately enter —

- (a) the names of persons from whom it has received a notice under section 135 as applied by section 137U(1); and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 136 or 137 as applied by section 137U(1), the information given in that notice.

[2/2009]

(2) The trustee must keep the register at its registered office or, if the trustee does not have a registered office, at its principal place of business in Singapore, and the register must be open for inspection by a unitholder of the real estate investment trust without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the trustee requires.

[2/2009]

(3) A person may request the trustee to provide the person with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the trustee requires for every page or part thereof required to be copied, and the trustee must send the copy to that person within 14 days, or such longer period as the Authority may allow in any particular case, after the day on which the trustee received the request.

[2/2009]

(4) The Authority may at any time in writing require the trustee to provide it with a copy of the register or any part of the register and the

trustee must send the copy to the Authority within 7 days after the day on which the trustee received the requirement.

[2/2009]

(5) Any trustee which fails to comply with subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

### **Powers of court with respect to non-compliance by substantial unitholders**

**137W.**—(1) Where a person is or has been a substantial unitholder of a real estate investment trust and has failed to comply with section 135, 136 or 137 as applied by section 137U(1), a court may, on the application of the Authority, whether or not that failure still continues, make one or more of the following orders:

- (a) an order restraining the person who is or has been a substantial unitholder from disposing of any interest in units in the real estate investment trust of which the person is or has been a substantial unitholder;
- (b) an order restraining a person who is, or is entitled to be, the holder of units referred to in paragraph (a) from disposing of any interest in those units;
- (c) an order restraining the exercise by any person of any voting or other rights attached to any unit in the real estate investment trust in which the substantial unitholder has or has had an interest;
- (d) an order directing the trustee of the real estate investment trust not to make payment, or to defer making payment, out of the property of the trust of any sum due in respect of any unit in which the substantial unitholder has or has had an interest;
- (e) an order directing the sale of any or all of the units in the real estate investment trust in which the substantial unitholder has or has had an interest;

- (f) an order directing the trustee of the real estate investment trust not to register or cause to be registered in the register of unitholders the transfer or transmission of units specified by the court;
- (g) an order directing the Depository (within the meaning of section 81SF) or any depository corporation not to register or cause to be registered the transfer or transmission of any units or interest in units in the real estate investment trust specified by the court;
- (h) an order that any exercise by any person of the voting or other rights attached to units in the real estate investment trust specified by the court in which the substantial unitholder has or has had an interest be disregarded;
- (i) for the purposes of securing compliance with any other order made under this section, an order directing the responsible person for or the trustee of the real estate investment trust, or any other person, to do or refrain from doing an act specified by the court.

*[2/2009; 35/2014]*

(2) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

*[2/2009]*

(3) An order made under this section directing the sale of any unit may provide that the sale is to be made within such time and subject to such conditions (if any) as the court thinks fit, including, if the court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial unitholder of the real estate investment trust.

*[2/2009]*

(4) Where a unit is not sold in accordance with an order of the court under this section, the Authority may apply to the court for directions, including directions as to who the unsold unit is to vest in.

*[2/2009]*

(5) The court, before making an order under this section and in determining the terms of such an order, is to satisfy itself, so far as it

can reasonably do so, that the order would not unfairly prejudice any person.

[2/2009]

(6) The court is not to make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the person who is or has been a substantial unitholder to comply as mentioned in subsection (1) was due to the person's inadvertence or mistake or to the person not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

[2/2009]

(7) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

[2/2009]

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

[2/2009]

(9) Any person who contravenes an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

[2/2009]

### **Power of trustee to require disclosure of beneficial interest in voting units**

**137X.**—(1) The trustee of a real estate investment trust may by written notice require any unitholder of the trust within such reasonable time as is specified in the notice —



- (a) to inform it whether the unitholder holds any voting units in the trust as beneficial owner or as trustee; and
- (b) if the unitholder holds them as trustee, to indicate so far as the unitholder can the persons for whom the unitholder holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

[2/2009]

(2) Where the trustee of a real estate investment trust is informed pursuant to a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting units in the trust, the trustee may by written notice require that other person within such reasonable time as is specified in the notice —

- (a) to inform it whether that other person holds that interest as beneficial owner or as trustee; and
- (b) if that other person holds it as trustee, to indicate so far as that other person can the persons for whom that other person holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

[2/2009]

(3) The trustee of a real estate investment trust may by written notice require any unitholder of the trust to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting units in the trust held by the unitholder are the subject of an agreement or arrangement under which another person is entitled to control the unitholder's exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

[2/2009]

(4) The notice referred to in subsection (1), (2) or (3) must contain such other information as the Authority may prescribe, and the delivery of such notice must comply with such requirements as the Authority may prescribe.

[2/2009]

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) must comply with that notice.

[2/2009]

(6) Whenever the trustee of a real estate investment trust receives information from a person pursuant to a requirement imposed on the person under this section with respect to units held by a unitholder of the trust, it is under an obligation to inscribe against the name of that unitholder in a separate part of the register kept by it under section 137V —

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information received pursuant to the requirement.

[2/2009]

(7) Section 137V applies in relation to the part of the register referred to in subsection (6) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (6).

[2/2009]

(8) Any person who —

(a) intentionally or recklessly contravenes subsection (5); or

(b) in purported compliance with subsection (5), provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall —

(c) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction; or

(d) in the case of a corporation, be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every

day or part of a day during which the offence continues after conviction.

[2/2009]

(9) Any person who —

- (a) contravenes subsection (5); or
- (b) in purported compliance with subsection (5), provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(10) A person shall not be guilty of an offence under subsection (8)(a) or (9)(a) if the person proves that the information in question was already in the possession of the trustee of the real estate investment trust, or that the requirement to give it was for any other reason frivolous or vexatious.

[2/2009]

(11) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Subdivision (2) — Disclosure by directors and chief executive officer of responsible person*

**Duty of director and chief executive officer of responsible person to notify of interests**

**137Y.**—(1) Every director and chief executive officer of the responsible person for a real estate investment trust must give written notice to the responsible person of particulars of —

- (a) units in the trust, being units held by him or her, or in which he or she has an interest and the nature and extent of that interest;
- (b) debentures or units of debentures of the trust which are held by him or her, or in which he or she has an interest and the nature and extent of that interest;
- (c) such other securities, securities-based derivatives contracts or units in a collective investment scheme as the Authority may prescribe, which are held, whether directly or indirectly, by him or her, or in which he or she has an interest and the nature and extent of that interest; and
- (d) any change in respect of the particulars of any matter referred to in paragraphs (a), (b) and (c).

[2/2009; 4/2017]

(2) A notice under subsection (1) —

- (a) must be in such form and must contain such information as the Authority may prescribe; and
- (b) must be given —
  - (i) in the case of a notice under subsection (1)(d), within 2 business days after the director or chief executive officer becomes aware of the change; or
  - (ii) in any other case, within 2 business days after —
    - (A) the date on which the director or chief executive officer becomes such a director or chief executive officer; or

(B) the date on which the director or chief executive officer becomes a holder of, or acquires an interest in, the units, debentures, units of debentures, other securities, securities-based derivatives contracts or units in a collective investment scheme referred to in subsection (1),

whichever last occurs.

[2/2009; 4/2017]

(3) For the purposes of this section, a director or chief executive officer of a responsible person is deemed to have an interest in securities, securities-based derivatives contracts or units in a collective investment scheme referred to in subsection (1) if a family member of the director or chief executive officer (not being himself or herself a director or chief executive officer of the responsible person) (as the case may be) has an interest in those securities, securities-based derivatives contracts or units in a collective investment scheme.

[2/2009; 4/2017]

(4) In this section —

“family member” means a spouse, or a son, adopted son, stepson, daughter, adopted daughter or stepdaughter below the age of 21 years;

“unit”, in relation to a debenture, means any right or interest, whether legal or equitable, in the debenture, by whatever name called, and includes any option to acquire any such right or interest in the debenture.

[2/2009]

### **Penalties under this Subdivision**

**137Z.**—(1) Any director or chief executive officer of the responsible person for a real estate investment trust who —

(a) intentionally or recklessly contravenes section 137Y(1) or (2); or

(b) in purported compliance with section 137Y, provides any information which he or she knows is false or misleading in a material particular or is reckless as to whether it is, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any director or chief executive officer of the responsible person for a real estate investment trust who —

(a) contravenes section 137Y(1) or (2); or

(b) in purported compliance with section 137Y, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Subdivision (3) — Disclosure by holders of voting shares in responsible person*

**Duty of holders of voting shares in responsible person to notify responsible person**

**137ZA.**—(1) Where the percentage of interest of a person in the voting shares in a responsible person for a real estate investment trust reaches, crosses or falls below 15%, 30%, 50% or 75%, the person must give written notice to the responsible person within 2 business days after the person becomes aware of this.

[2/2009]

(2) A notice under subsection (1) must be in such form and must contain such information as the Authority may prescribe.

[2/2009]

(3) In subsection (1), the percentage of interest of a person in the voting shares in a responsible person for a real estate investment trust is ascertained by expressing the total votes attached to all the voting shares in which the person has an interest or interests immediately before or (as the case may be) immediately after the relevant time, as a percentage of the total votes attached to —

- (a) all the voting shares (excluding treasury shares) in the responsible person; or
- (b) where the share capital of the responsible person is divided into 2 or more classes of shares, all the voting shares (excluding treasury shares) in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

[2/2009]

**Penalties under this Subdivision**

**137ZB.**—(1) Any person who —

- (a) intentionally or recklessly contravenes section 137ZA(1) or (2); or

(b) in purported compliance with section 137ZA, provides any information which the person knows is false or misleading in a material particular or is reckless as to whether it is, shall be guilty of an offence and shall —

(c) in the case of an individual, be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction; or

(d) in the case of a corporation, be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(2) Any person who —

(a) contravenes section 137ZA(1) or (2); or

(b) in purported compliance with section 137ZA, provides any information which is false or misleading in a material particular,

in circumstances other than as set out in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(3) No proceedings shall be instituted against a person for an offence under this section after —

(a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a



civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Subdivision (4) — Disclosure by responsible person*

**Duty of responsible person for real estate investment trust to make disclosure**

**137ZC.**—(1) Where the responsible person for a real estate investment trust —

- (a) acquires or disposes of interests in units in, or debentures or units of debentures of, the real estate investment trust;
- (aa) acquires or disposes of interests in such securities, securities-based derivatives contracts or units in a collective investment scheme of the real estate investment trust as may be prescribed by regulations made under section 341; or
- (b) has been notified in writing by —
  - (i) a substantial unitholder of the real estate investment trust pursuant to a requirement imposed on the substantial unitholder under section 135, 136 or 137 as applied by section 137U(1);
  - (ii) a director or chief executive officer of the responsible person pursuant to a requirement imposed on him or her under section 137Y; or
  - (iii) a person who holds an interest or interests in voting shares in the responsible person pursuant to a requirement imposed on the person under section 137ZA,

the responsible person must announce or otherwise disseminate the particulars of the acquisition or disposal, or the information stated in the notice it received (as the case may be) to the organised market operated by the approved exchange on whose official list any or all of the units in the trust are listed, as soon as practicable and in any case no later than the end of the business day following the day on which

the responsible person became aware of the acquisition or disposal, or received the notice.

[2/2009; 4/2017]

(2) The responsible person must announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

[2/2009]

(3) Any responsible person for a real estate investment trust that —

(a) intentionally or recklessly contravenes subsection (1) or (2); or

(b) in purported compliance with this section, announces or disseminates any information which the responsible person knows is false or misleading in a material particular or is reckless as to whether it is,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(4) Any responsible person for a real estate investment trust that —

(a) contravenes subsection (1) or (2); or

(b) in purported compliance with this section, announces or disseminates any information that is false or misleading in a material particular,

in circumstances other than as set out in subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(5) Where an offence has been committed by a responsible person under subsection (3) or (4), any officer of the responsible person who —

(a) causes the responsible person to contravene subsection (1);

- (b) announces or disseminates, or permits or authorises the announcement or dissemination of, the information that is false or misleading in a material particular; or
- (c) announces or disseminates, or permits or authorises the announcement or dissemination of the information in contravention of subsection (2),

shall —

- (d) if he or she had acted intentionally or recklessly, or with knowledge that the information so announced or disseminated is false or misleading in a material particular or is reckless as to whether it is, be guilty of an offence and be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (e) if he or she had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

[2/2009]

(6) In this section, “officer” means a director, member of the committee of management, chief executive officer, manager, secretary or other similar officer of the responsible person, and includes a person purporting to act in any such capacity.

[2/2009]

(7) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 137ZD(4), in respect of the same contravention.

[2/2009]

*Division 4 — Civil Penalty***Civil penalty**

**137ZD.**—(1) Whenever it appears to the Authority that any person has —

- (a) intentionally or recklessly, contravened any of the following provisions:
  - (i) section 133(1) or (3), 135, 136(1) or (2), 137, 137A, 137B, 137F(5), 137G(1) or (2), 137M(5), 137N(1) or (2), 137P(1) or (2), 137R(1) or (2), 137X(5), 137Y(1) or (2), 137ZA(1) or (2) or 137ZC(1) or (2);
  - (ii) section 135, 136, 137, 137A or 137B as applied by section 137J(1);
  - (iii) section 135, 136, 137, 137A or 137B as applied by section 137U(1);
- (b) in purported compliance with any of the following provisions, provided, announced or disseminated any information which the person knows is false or misleading in a material particular or is reckless as to whether it is:
  - (i) section 133, 135, 136, 137, 137B, 137F(5), 137G, 137M(5), 137N, 137P, 137R, 137X(5), 137Y, 137ZA or 137ZC;
  - (ii) section 135, 136, 137 or 137B as applied by section 137J(1);
  - (iii) section 135, 136, 137 or 137B as applied by section 137U(1); or

- (c) being an officer of a corporation to which Division 1 applies, an officer of a trustee-manager of a registered or recognised business trust to which Division 2 applies, or an officer of a responsible person for a real estate investment trust to which Division 3 applies, intentionally or recklessly committed an act referred to in subsection (5)(a), (b) or (c) of section 137G, 137R or 137ZC, as the case may be,

the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the person to seek an order for a civil penalty in respect of that act.

[2/2009]

(2) If the court is satisfied on a balance of probabilities that subsection (1)(a), (b) or (c) (as the case may be) has been proved, the court may make an order against the person for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

[2/2009]

(3) Despite subsection (2), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of having committed an act referred to in subsection (1)(a), (b) or (c) (whichever is applicable), and the order may be made on such terms as may be agreed between the Authority and the person.

[2/2009]

(4) Nothing in this section is to be construed to prevent the Authority from entering into an agreement with the person to pay, with or without admission of liability, a civil penalty within the limits referred to in subsection (2) for an act referred to in subsection (1)(a), (b) or (c).

[2/2009]

(5) A civil penalty imposed under this section is to be paid into the Consolidated Fund and is to be treated as a debt due to the Government for the purposes of section 10 of the Government Proceedings Act 1956.

[2/2009; 4/2017]

(6) If the person fails to pay the civil penalty imposed on the person within the time specified in the court order referred to in subsection (3) or specified under the agreement referred to in subsection (4), the Authority may recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

[2/2009]

(7) Any defence that is available to a person who is prosecuted for an act under subsection (1)(a), (b) or (c), is also available to a person against whom an action is brought under this section for the same act.

[2/2009]

### **Action under section 137ZD not to commence, etc., in certain situations**

**137ZE.**—(1) An action under section 137ZD for an act referred to in subsection (1)(a), (b) or (c) of that section must not be commenced against any person —

- (a) after the expiration of 6 years from the date of the act; or
- (b) if the person has been convicted or acquitted in criminal proceedings instituted against the person for that act, except where the person has been acquitted because of the withdrawal of the charge against the person.

[2/2009]

(2) An action under section 137ZD against any person for an act referred to in subsection (1)(a), (b) or (c) of that section must be stayed after criminal proceedings have been commenced against the person for that act, and may thereafter be continued only if —

- (a) that person has been discharged in respect of that act and the discharge does not amount to an acquittal; or
- (b) the charge against that person in respect of that act has been withdrawn.

[2/2009]

### **Jurisdiction of District Court**

**137ZF.** A District Court has jurisdiction to hear and determine any action under section 137ZD regardless of the monetary amount.

[2/2009]

**Rules of Court**

**137ZG.** Rules of Court may be made —

- (a) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under section 137ZD; and
- (b) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

[2/2009]

PART 7A  
SHORT SELLING

[4/2017]

**Interpretation of this Part**

**137ZH.**—(1) In this Part, unless the context otherwise requires —

“securities lending arrangement” means a written arrangement where a person (called in this Part the lender) who has an interest in specified capital markets products is to transfer title to some or all of the specified capital markets products to another person (called in this Part the borrower) for an agreed period of time, after which the borrower is to transfer title to those specified capital markets products back to the lender;

“short position” means the amount by which the quantity, volume or value of any specified capital markets products in which a person has an interest is less than the quantity, volume or value of the specified capital markets products which the person is under an obligation to deliver, where the quantity, volume or value of any specified capital markets products is determined in accordance with the criteria, methods or formulae prescribed by regulations made under section 137ZM;

“short sell order” means an order to sell any specified capital markets products where the person who makes the order does

not, at the time of the order, have an interest in the specified capital markets products;

“specified capital markets products” means any capital markets products listed or to be listed on an approved exchange that is, or that belongs to a class of capital markets products that is, prescribed by regulations made under section 137ZM.

[4/2017]

(2) In this Part and subject to subsection (3), a person has an interest in specified capital markets products if —

- (a) the person is the legal owner of the specified capital markets products;
- (b) the person is the beneficial owner of the specified capital markets products;
- (c) the person has authority (whether formal or informal, or express or implied) to dispose of the specified capital markets products;
- (d) the person —
  - (i) has purchased or entered into an unconditional agreement or arrangement to purchase the specified capital markets products, but has not received delivery of the specified capital markets products;
  - (ii) has tendered the specified capital markets products for conversion or exchange, or has issued irrevocable instructions to convert or exchange capital markets products into the specified capital markets products, but has not received delivery of the specified capital markets products;
  - (iii) has exercised an option to subscribe for the specified capital markets products, but has not received delivery of the specified capital markets products; or



(iv) has exercised a right under a warrant to subscribe for the specified capital markets products, but has not received delivery of the specified capital markets products,

and, under the agreement, arrangement, conversion, exchange, option or right (referred to in sub-paragraphs (i) to (iv)), the person is to receive delivery of the specified capital markets products before the time that the person is to deliver the specified capital markets products;

(e) the person —

(i) is the lender in a securities lending arrangement;

(ii) has transferred title to the specified capital markets products to the borrower in the securities lending arrangement; and

(iii) is to receive title from the borrower in the securities lending arrangement to the specified capital markets products before the time that the person is to deliver the specified capital markets products; or

(f) the person is a party to an agreement or arrangement that is, or that belongs to a class of agreements or arrangements that is, prescribed by regulations made under section 137ZM for the purposes of this paragraph.

[4/2017]

(3) Despite subsection (2), a person does not have an interest in specified capital markets products if —

(a) the person is a borrower under a securities lending arrangement and has obtained title to the specified capital markets products pursuant to the securities lending arrangement;

(b) the person is the legal owner or the beneficial owner of the specified capital markets products but has sold, or entered into an unconditional agreement or arrangement to sell, the specified capital markets products; or

- (c) the person is the legal owner or the beneficial owner of the specified capital markets products, or has authority to dispose of the specified capital markets products, but is a party to an agreement or arrangement that is, or that belongs to a class of agreements or arrangements that is, prescribed by regulations made under section 137ZM for the purposes of this paragraph.

[4/2017]

(4) In the definition of “short position” in subsection (1), the following are the specified capital markets products which a person is under an obligation to deliver:

- (a) the specified capital markets products in respect of which the person has an obligation to deliver under a sale agreement, but has not delivered;
- (b) the specified capital markets products in respect of which the person has an obligation to vest title in a lender under a securities lending arrangement, but has not vested title;
- (c) the specified capital markets products in respect of which the person has any other non-contingent legal obligation to deliver, but has not delivered.

[4/2017]

### **Persons obliged to comply with this Part and power of Authority to grant exemptions or extensions**

**137ZI.**—(1) The obligation to comply with this Part extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[4/2017]

(2) This Part extends to acts done or omitted to be done outside Singapore.

[4/2017]

(3) Despite section 337(1), the Authority may by regulations made under section 137ZM exempt any person or class of persons from all or any provisions of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[4/2017]

(4) The Authority may, by written notice, exempt any person or class of persons from all or any provisions of this Part, subject to such conditions or restrictions as the Authority may specify in writing.

[4/2017]

(5) It is not necessary to publish any exemption granted under subsection (4) in the *Gazette*.

[4/2017]

(6) Any person that is exempted under subsection (3) or (4) must satisfy every condition or restriction imposed on the person under the applicable subsection.

[4/2017]

(7) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[4/2017]

(8) Any person who contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Disclosure of short sell orders**

**137ZJ.**—(1) Subject to subsection (2), a person (*A*) who makes a short sell order on any approved exchange must, before or at the time of the short sell order, disclose to the approved exchange —

- (a) that *A* intends to make or is making a short sell order; and
- (b) the quantity, volume or value of the specified capital markets products in relation to which *A* intends to make or is making an order to sell but in which *A* does not have an interest.

[4/2017]

(2) Where another person (*B*) places the short sell order mentioned in subsection (1) on *A*'s behalf, *A* need not comply with subsection (1) if, before or at the time of the short sell order, *A* discloses to *B* —

- (a) that *A* intends to make or is making a short sell order; and

- (b) the quantity, volume or value of the specified capital markets products in relation to which *A* intends to make or is making an order to sell but in which *A* does not have an interest.

[4/2017]

(3) Where *A* has made the disclosure mentioned in subsection (2) to *B*, *B* must, before or at the time of the short sell order, disclose to the approved exchange —

- (a) that *A* intends to make or is making a short sell order; and
- (b) the quantity, volume or value of the specified capital markets products in relation to which *A* intends to make or is making an order to sell but in which *A* does not have an interest.

[4/2017]

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

[4/2017]

### Reporting of short position

**137ZK.**—(1) Where a person's (*A*) short position in relation to any specified capital markets products is equivalent to or more than the short position threshold prescribed by regulations made under section 137ZM, *A* must, at the time or times and in the form and manner prescribed by regulations made under section 137ZM, report to the Authority directly or through another person (*B*) —

- (a) information on —
- (i) the identity and business activities of *A* and (if applicable) *B*; and
- (ii) *A*'s short position in relation to the specified capital markets products,
- prescribed by regulations made under section 137ZM; and
- (b) any change to the information mentioned in paragraph (a).

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Power of Authority to publish information**

**137ZL.** Without affecting section 322, the Authority may, for the purpose of maintaining a fair, orderly or transparent market, publish in any form or manner the information or any part of the information reported to the Authority under section 137ZK(1).

[4/2017]

### **Power of Authority to make regulations**

**137ZM.** Without affecting section 341, the Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

[4/2017]

## PART 8

### SECURITIES INDUSTRY COUNCIL AND TAKE-OVER OFFERS

#### **Securities Industry Council**

**138.—**(1) The advisory body known as the Securities Industry Council referred to in section 14 of the repealed Securities Industry Act (Cap. 289, 1985 Revised Edition) continues in existence as if it had been established under this Act.

(2) The function of the Securities Industry Council is, in addition to the functions conferred upon it under this Part, to advise the Minister on all matters relating to the securities industry.

(3) The Securities Industry Council consists of such representatives of business, the Government and the Authority as the Minister may appoint and those representatives are to serve for such period or periods as the Minister may determine.

(4) The Securities Industry Council has the power, in the exercise of its functions, to enquire into any matter or thing related to the securities industry and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the enquiry.

(5) Nothing in subsection (4) compels the production by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, of a document containing a privileged communication made by or to him or her in that capacity or authorise the taking of possession of any such document which is in his or her possession.

[34/2012]

(6) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to produce the document referred to in subsection (5) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom or by or on behalf of whom the communication was made.

[34/2012]

(7) The Authority may consult the Securities Industry Council for the proper and effective implementation of this Act.

(8) For the purposes of this Act, every member of the Securities Industry Council —

- (a) is deemed to be a public servant within the meaning of the Penal Code 1871; and
- (b) has, in case of any action or suit brought against him or her for any act done or omitted to be done in the execution of his or her duty under the provisions of this Act, the like protection and privileges as are by law given to a Judge in the execution of his or her office.

(9) The Securities Industry Council must in the exercise of its functions have regard to the interests of the public, the protection of investors and the safeguarding of sources of information.

(10) Subject to the provisions of this Act, the Securities Industry Council may regulate its own procedure and is not bound by the rules of evidence.

**Take-over Code**

**139.**—(1) This section and section 140 apply to and in relation to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all corporations or bodies unincorporate, whether incorporated or carrying on business in Singapore or not, and extend to acts done outside Singapore.

(2) For the more effective administration, supervision and control of take-over offers and matters connected therewith, the Authority is to, on the advice of the Securities Industry Council and under section 321, issue a code known as the Singapore Code on Take-overs and Mergers (called in this Act the Take-over Code).

(3) To avoid doubt, the Take-over Code is deemed not to be subsidiary legislation.

(4) The Take-over Code applies to a take-over offer and to matters connected therewith, and all parties concerned in a take-over offer or a matter connected therewith must comply with its provisions.

(5) The Take-over Code is administered and enforced by the Securities Industry Council.

(6) The Authority may, on the advice of the Securities Industry Council, revise the Take-over Code by deleting, amending or adding to the provisions thereof.

(7) The Securities Industry Council may issue rulings on the interpretation of the general principles and rules in the Take-over Code and lay down the practice to be followed by parties concerned in a take-over offer or a matter connected therewith, and such rulings or practice is final.

(8) A failure of any party concerned in a take-over offer or a matter connected therewith to observe any of the provisions of the Take-over Code does not of itself render that party liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(9) Nothing in subsection (8) is to be construed as preventing the Securities Industry Council from invoking such sanctions (including public censure) as it may decide in relation to breaches of the Take-over Code by any party concerned in a take-over offer or a matter connected therewith.

(10) Where the Securities Industry Council has reason to believe that any party concerned in a take-over offer or a matter connected therewith, or any person advising on a take-over offer or a matter connected therewith, is in breach of the provisions of the Take-over Code or is otherwise believed to have committed acts of misconduct in relation to such take-over offer or matter, the Securities Industry Council has power to enquire into the suspected breach or misconduct.

(11) For the purpose of subsection (10), the Securities Industry Council may summon any person to give evidence on oath or affirmation, which it is authorised to administer, or produce any document or material necessary for the purpose of the enquiry.

### **Offences relating to take-over offers**

**140.**—(1) A person who has no intention to make an offer in the nature of a take-over offer must not give notice or publicly announce that the person intends to make a take-over offer.

(2) A person must not make a take-over offer or give notice or publicly announce that the person intends to make a take-over offer if the person has no reasonable or probable grounds for believing that the person will be able to perform the person's obligations if the take-over offer is accepted or approved, as the case may be.

(3) Where a person contravenes subsection (1) or (2), the person and, where the person is a corporation, every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.



## PART 9

## SUPERVISION AND INVESTIGATION

*Division 1 — Supervisory Powers*

[2/2009]

*Subdivision (1) — Powers of Authority to require disclosure of information about capital markets products*

[4/2017]

**Interpretation of this Subdivision**

**141.** In this Subdivision, a reference to disclosing information includes, in relation to information that is contained in a document, a reference to producing the document.

**Acquisition and disposal of capital markets products**

**142.**—(1) The Authority may, where it considers it necessary for the protection of investors, require the holder of a capital markets services licence to deal in capital markets products, or an exempt person carrying on business in such activity, to disclose to the Authority, in relation to any acquisition or disposal of capital markets products —

- (a) the name of the person from or through whom or on whose behalf the capital markets products were acquired; or
- (b) the name of the person to or through whom or on whose behalf the capital markets products were disposed of,

and the nature of the instructions given to the holder or exempt person in respect of the acquisition or disposal.

[4/2017]

(2) The Authority may require a person who has acquired, held or disposed of capital markets products to disclose to the Authority whether the person acquired, held or disposed of those capital markets products (as the case may be) as trustee for, or on behalf of, another person (whether or not as a nominee), and if so —

- (a) the name of that other person; and

- (b) the nature of any instructions given to the firstmentioned person in respect of the acquisition, holding or disposal.

[4/2017]

(3) The Authority may require an approved exchange to disclose to the Authority, in relation to an acquisition or disposal of capital markets products on the organised market of that approved exchange, the names of the members of that approved exchange who acted in the acquisition or disposal.

[4/2017]

(4) The Authority may require an approved clearing house or a recognised clearing house for an organised market to disclose to the Authority, in relation to any dealing in capital markets products on that organised market, the names of the members of the approved clearing house or recognised clearing house who were concerned in any act or omission in relation to the dealing.

[4/2017]

### **Exercise of certain powers in relation to capital markets products and financial instruments**

**143.**—(1) This section applies where the Authority considers that —

- (a) it may be necessary to prohibit trading in securities or securities-based derivatives contracts or units in a collective investment scheme under section 46;
- (b) it may be necessary to give a direction or take any action under section 46AA or 81S in relation to any capital markets products or financial instruments;
- (c) a person may have contravened any of the provisions of Part 7 in relation to any capital markets products; or
- (d) a person may have contravened any of the provisions of Part 12 in relation to any capital markets products or financial instruments.

[4/2017]

(2) The Authority may require an officer of an entity or trust, the securities, securities-based derivatives contracts and units in a collective investment scheme of which are mentioned in

subsection (1), to disclose to the Authority any information of which he or she is aware and which may have affected any dealing or trading that has taken place, or which may affect any dealing or trading that may take place, in the securities, securities-based derivatives contracts and units in a collective investment scheme.

[4/2017]

(3) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

- (a) any dealing in capital markets products mentioned in subsection (1);
- (b) any advice given, or any report or analysis issued or published concerning such capital markets products, by the holder of a capital markets services licence to deal in capital markets products, or a representative of such a holder;
- (c) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital markets services licence to deal in capital markets products and who has dealt in or given advice or issued or published a report or an analysis concerning such capital markets products;
- (d) the financial position of any business carried on by a nominee controlled by a person mentioned in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is a person mentioned in that paragraph;
- (e) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to deal in capital markets products, being a book relating to dealings in such capital markets products,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

[4/2017]

**Exercise of certain powers in relation to financial benchmarks**

**144.**—(1) This section applies where the Authority considers that —

- (a) it may be necessary to give a direction in relation to any designated benchmark under section 123ZZB; or
- (b) a person may have contravened any of the provisions of Part 12 in relation to a financial benchmark.

[4/2017]

(2) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

- (a) the activity of administering a financial benchmark;
- (b) the activity of providing information in relation to a financial benchmark;
- (c) the financial position of any authorised benchmark administrator, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter or designated benchmark submitter;
- (d) the financial position of any business carried on by a nominee controlled by a person mentioned in paragraph (c) or jointly controlled by 2 or more persons, at least one of whom is a person mentioned in that paragraph;
- (e) an audit of, or any report of an auditor concerning, any book of any authorised benchmark administrator, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter, or designated benchmark submitter, being a book relating to a designated benchmark,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

[4/2017]

### **Self-incrimination**

**145.**—(1) A person is not excused from disclosing information to the Authority, under a requirement made of the person under section 142, 143 or 144, on the ground that the disclosure of the information might tend to incriminate the person.

(2) Where a person claims, before making a statement disclosing information that the person is required to disclose by a requirement made of the person under section 142, 143 or 144, that the statement might tend to incriminate the person, that statement —

- (a) is not admissible in evidence against the person in criminal proceedings other than proceedings under section 148; but
- (b) is admissible in evidence for civil proceedings under Part 12.

### **Saving for advocates and solicitors**

**146.**—(1) Nothing in this Subdivision compels the disclosure by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, of information containing a privileged communication made by or to him or her in that capacity.

*[34/2012]*

(2) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to disclose the information referred to in subsection (1) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

*[34/2012]*

### **Immunities**

**147.**—(1) No civil or criminal proceedings, other than proceedings for an offence under section 148, shall lie against any person for disclosing any information to the Authority if the person had done so in good faith in compliance with a requirement of the Authority under section 142, 143 or 144.

(2) Any person who complies with a requirement of the Authority under section 142, 143 or 144 is not treated as being in breach of any

restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

### **Offences**

**148.**—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Authority under section 142, 143 or 144 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(2) A person who, in purported compliance with a requirement of the Authority under section 142, 143 or 144, discloses information, or makes a statement, that 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 \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that the defendant believed on reasonable grounds that the information or statement was true and was not misleading.

### **Copies of or extracts from documents to be admitted in evidence**

**149.**—(1) Subject to this section, a copy of or extract from a document produced under this Subdivision that is proved to be a true copy of the document or of the relevant part of the document is admissible in evidence as if it were the original document or the relevant part of the original document.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a document is a true copy of the document or of a part of the document may be given by a person who has compared the copy or extract with the document or the relevant part of the document and may be given orally or by an affidavit sworn, or by a declaration

made, before a person authorised to take affidavits or statutory declarations.

*Subdivision (2) — Inspection powers of Authority*

**Inspection by Authority**

**150.**—(1) The Authority may inspect under conditions of secrecy, the books of an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, an exempt person, an authorised benchmark administrator, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter, a designated benchmark submitter, or a representative.

[4/2017]

- (2) For the purpose of an inspection under this section —
- (a) a person referred to in subsection (1) or any person in possession of the books, must produce such books to the Authority and give such information and facilities as the Authority may require; and
  - (b) a person referred to in subsection (1) must procure that any person who is in possession of such books produce the books to the Authority and give such information and facilities as the Authority may require.
- (3) The Authority may —
- (a) make copies of, or take possession of, any of the books;
  - (b) use, or permit the use of, any of the books for the purposes of any proceedings under this Act; and
  - (c) retain possession of any of the books for so long as is necessary —
    - (i) for the purposes of exercising a power conferred by this section (other than subsection (5));

- (ii) for a decision to be made about whether or not any proceedings under this Act to which the books concerned would be relevant should be instituted; or
- (iii) for such proceedings to be instituted and carried on.

(4) No person is entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority, the Authority —

(a) must permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled to inspect if they were not in the Authority's possession; and

(b) may permit another person to inspect any of the books.

(6) The Authority may require a person who produced any of the books to the Authority to explain to the best of the person's knowledge and belief any matter about the compilation of the books or to which the books relate.

(7) Any person who, without reasonable excuse, fails to comply with subsection (2) or a requirement of the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Sections 146 and 147 apply, with the necessary modifications, in relation to the production of any book or disclosure of any information to the Authority under this section.

(9) Section 149 applies, with the necessary modifications, in relation to a copy of, or extract from, a book inspected under this section.

### **Confidentiality of inspection reports**

**150A.**—(1) Where a written report or any part of a written report (called in this section the report) has been produced by the Authority upon an inspection under section 150 in respect of any person mentioned in subsection (1) of that section (called in this section the



inspected person) and is provided by the Authority to the inspected person, the report must not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

[4/2017]

(2) Disclosure of the report referred to in subsection (1) may be made —

- (a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor (as the case may be) in that inspected person;
- (b) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person; or
- (c) to such other person as the Authority may approve in writing.

[2/2009]

(3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person must comply with such conditions or restrictions.

[2/2009]

(4) The obligation on an officer or auditor referred to in subsection (1) continues after the termination or cessation of his or her employment or appointment by the inspected person.

[2/2009]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[2/2009]

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless the person proves that —

- (a) the disclosure was made contrary to the person's desire;
- (b) where the disclosure was made in any written form, the person had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and
- (c) where the disclosure was made in an electronic form, the person had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

[2/2009]

*Subdivision (3) — Inspection powers of foreign regulatory authority*

**Inspection by foreign regulatory authority**

**150B.**—(1) A foreign regulatory authority of a country or territory other than Singapore may conduct an inspection in Singapore of the books of —

- (a) the holder of a capital markets services licence;
- (b) a person exempted under section 99(1)(a), (b), (c), (d) or (h) from the requirement to hold a capital markets services licence;
- (c) an approved exchange;
- (d) a recognised market operator incorporated in Singapore;
- (e) a licensed trade repository;
- (f) an approved clearing house;
- (g) a recognised clearing house incorporated in Singapore;

- (h) an approved holding company incorporated in Singapore;
- (i) an approved trustee mentioned in section 289;
- (j) an authorised benchmark administrator;
- (k) an exempt benchmark administrator;
- (l) an authorised benchmark submitter;
- (m) an exempt benchmark submitter; or
- (n) a designated benchmark submitter,

(called in this section and in section 150C a relevant person) with the prior written approval of the Authority and under conditions of secrecy.

*[2/2009; 4/2017]*

(2) In deciding whether to grant approval to a foreign regulatory authority under subsection (1), the Authority may have regard to the following considerations:

- (a) whether the inspection, and the information obtained in the course of the inspection, is required by the foreign regulatory authority for the sole purpose of enabling the foreign regulatory authority to carry out its regulatory functions;
- (b) whether the foreign regulatory authority has regulatory oversight in its jurisdiction over the relevant person;
- (c) whether the foreign regulatory authority is prohibited by the laws applicable to it from disclosing information obtained by it in the course of the inspection to any other person;
- (d) whether the foreign regulatory authority has provided or is willing to provide similar assistance to the Authority;
- (e) such other matters as the Authority may consider relevant.

*[2/2009; 4/2017]*

(3) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, impose conditions or restrictions on the foreign regulatory authority relating to —

- (a) the classes of information to which the foreign regulatory authority has or does not have access in the course of the inspection;
- (b) the conduct of the inspection;
- (c) the use or disclosure of any information obtained in the course of the inspection; and
- (d) such other matters as the Authority may determine.

[2/2009]

(4) The Authority may, in relation to an inspection by a foreign regulatory authority conducted or to be conducted under this section on the relevant person, at any time, by written notice to the relevant person impose any conditions or restrictions on the relevant person, and the relevant person must comply with such conditions or restrictions.

[4/2017]

(4A) To avoid doubt, this section, and section 150C in relation to an inspection under this section, do not apply to any inspection by a foreign regulatory authority of the books of any person, if —

- (a) the foreign regulatory authority is an AML/CFT authority as defined in section 152 of the Monetary Authority of Singapore Act 1970, and exercises consolidated supervision authority as defined in that section over that person; and
- (b) the inspection is solely for the purpose of such consolidated supervision.

[31/2017]

(5) For the purposes of this section and section 150C, a reference to a foreign regulatory authority is a reference to an authority of a country or territory other than Singapore, exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act 1970.

[2/2009]

**Confidentiality of inspection report by foreign regulatory authority**

**150C.**—(1) Where a written report or any part of a written report (called in this section the report) has been produced by a foreign regulatory authority upon an inspection under section 150B in respect of any relevant person (called in this section the inspected person) and is provided by the foreign regulatory authority to the inspected person, the report must not be disclosed by the inspected person or, if the inspected person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

[2/2009; 4/2017]

(2) Disclosure of the report referred to in subsection (1) may be made —

- (a) by the inspected person to any officer or auditor of that inspected person solely in connection with the performance of the duties of the officer or auditor (as the case may be) in that inspected person;
- (b) by any officer or auditor of the inspected person to any other officer or auditor of that inspected person, solely in connection with the performance of their duties in that inspected person;
- (c) to the Authority, if requested by the Authority; or
- (d) to such other person as the Authority may approve in writing.

[2/2009]

(3) In granting written approval for any disclosure under subsection (2)(d), the Authority may impose such conditions or restrictions as it thinks fit on the inspected person, any of its officers or auditors or the person to whom disclosure is approved, and that person must comply with such conditions or restrictions.

[2/2009]

(4) The obligation on an officer or auditor referred to in subsection (1) continues after the termination or cessation of his or her employment or appointment by the inspected person.

[2/2009]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[2/2009]

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless the person proves that —

- (a) the disclosure was made contrary to the person's desire;
- (b) where the disclosure was made in any written form, the person had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and
- (c) where the disclosure was made in an electronic form, the person had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

[2/2009]

*Division 2 — Power of Minister to Appoint  
Inspector for Investigating Dealings  
in Securities, etc.*

**Power of Minister to appoint inspectors**

**151.**—(1) Despite anything in this Act, the Minister may, if he or she thinks it in the public interest to do so, appoint any person as an inspector to investigate any matter concerning dealing in capital markets products, administering a designated benchmark or providing information in relation to a designated benchmark.

[4/2017]

(2) An inspector appointed under subsection (1) has all the powers conferred upon an inspector under Part 9 of the Companies Act 1967

and that Part applies, with the necessary modifications, to such investigation.

(3) Any inspector appointed under subsection (1) must report the results of the inspector's investigation to the Minister and the Minister may, if he or she thinks it in the public interest to do so, cause the report to be printed and published.

*Division 3 — Investigative Powers of Authority*

*Subdivision (1) — General*

**Investigation by Authority**

**152.**—(1) The Authority may conduct such investigation as it considers necessary or expedient for any of the following purposes:

- (a) to exercise any of its powers or to perform any of its functions and duties under this Act;
- (b) to ensure compliance with this Act or any written direction issued under this Act;
- (c) to investigate an alleged or suspected contravention of any provision of this Act or any written direction issued under this Act.

(2) The Authority may exercise any of its powers under this Division for the purposes of conducting an investigation under subsection (1) despite the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law.

(3) A requirement imposed by the Authority in the exercise of its powers under this Division has effect despite any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Any person who complies with a requirement imposed by the Authority in the exercise of its powers under this Division is not treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any

requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(5) No civil or criminal action, other than proceedings for an offence under section 162 or 168, shall lie against any person —

- (a) for giving assistance to the Authority, including answering questions, if the person had given the assistance or answered the questions in good faith in compliance with a requirement imposed under this Division;
- (b) for providing information or producing books to the Authority if the person had provided the information or produced the books in good faith in compliance with a requirement imposed by the Authority under this Division; or
- (c) for doing or omitting to do any act, if the person had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Division.

(6) In this section, “requirement imposed by the Authority” includes a requirement imposed by an investigator under Subdivision (2) or (3).

[34/2012]

### **Confidentiality of investigation reports**

**152A.**—(1) Where a written report or any part thereof (called in this section the report) has been produced by the Authority in respect of any investigation under section 152 and is provided by the Authority to the person under investigation (called in this section the investigated person), the report must not be disclosed by the investigated person or, if the investigated person is a corporation, by any of its officers or auditors, to any other person except in the circumstances provided under subsection (2).

[2/2009]

(2) Disclosure of the report referred to in subsection (1) may be made —

- (a) by the investigated person to any officer or auditor of that investigated person solely in connection with the



performance of the duties of the officer or auditor (as the case may be) in that investigated person;

- (b) by any officer or auditor of the investigated person to any other officer or auditor of that investigated person, solely in connection with the performance of their duties in that investigated person; or
- (c) to such other person as the Authority may approve in writing.

[2/2009]

(3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the investigated person, any of its officers or auditors or the person to whom disclosure is approved, and that person must comply with such conditions or restrictions.

[2/2009]

(4) The obligation on an officer or auditor referred to in subsection (1) continues after the termination or cessation of his or her employment or appointment by the investigated person.

[2/2009]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[2/2009]

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both, unless the person proves that —

- (a) the disclosure was made contrary to the person's desire;
- (b) where the disclosure was made in any written form, the person had as soon as practicable after receiving the report surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

- (c) where the disclosure was made in an electronic form, the person had as soon as practicable after receiving the report taken all reasonable steps to ensure that all electronic copies of the report had been deleted and that the report and all copies thereof in other forms had been surrendered to the Authority.

[2/2009]

### **Self-incrimination and saving for advocates and solicitors**

**153.**—(1) A person is not excused from disclosing information to the Authority or, as the case may be, an investigator under Subdivision (2) or (3), under a requirement made of the person under any provision of this Division on the ground that the disclosure of the information might tend to incriminate the person.

[34/2012]

(2) Where a person claims, before making a statement disclosing information that the person is required to under any provision of this Division to the Authority or (as the case may be) an investigator under Subdivision (2) or (3), that the statement might tend to incriminate the person, that statement —

- (a) is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section 162(3); but
- (b) is, to avoid doubt, admissible in evidence in civil proceedings under Part 12.

[2/2009; 34/2012]

(3) Nothing in this Division —

- (a) compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him or her in that capacity; or
- (b) authorises the taking of any such document or other material which is in his or her possession.

[34/2012]

(4) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to disclose the information or produce the document or other material referred to in subsection (3) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

[34/2012]

### *Subdivision (2) — Examination of persons*

#### **Requirement to appear for examination**

**154.**—(1) For the purpose of an investigation under this Division, the Authority may, in writing, require a person —

- (a) to give to the Authority all reasonable assistance in connection with the investigation; and
- (b) to appear before an officer of the Authority duly authorised by the Authority for examination on oath and to answer questions.

(2) A written requirement imposed under subsection (1) must state the general nature of the matter referred to in subsection (1).

#### **Proceedings at examination**

**155.** The provisions of this Subdivision apply where, pursuant to a requirement made under section 154 for the purposes of an investigation under this Division, a person (called in this Subdivision the examinee) appears before another person (called in this Subdivision the investigator) for examination.

#### **Requirements made of examinee**

**156.**—(1) The investigator may examine the examinee on oath or affirmation and may, for that purpose, administer an oath or affirmation to the examinee.

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make are true.

(3) The investigator may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Authority is investigating, or is to investigate, under this Division.

### **Examination to take place in private**

**157.**—(1) The examination must take place in private and the investigator may give directions as to who may be present during the examination or part thereof.

(2) A person must not be present at the examination unless the person is —

- (a) the investigator or the examinee;
- (b) a person approved by the Authority; or
- (c) entitled to be present by virtue of a direction under subsection (1).

### **Record of examination**

**158.**—(1) The investigator may, and must if the examinee so requests, cause a record to be made of statements made at the examination.

(2) If a record made under subsection (1) is in writing or is reduced to writing —

- (a) the investigator may require the examinee to read the record, or to have it read to the examinee, and may require the examinee to sign it; and
- (b) the investigator must, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions as the investigator may impose.

### **Giving copies of record to other persons**

**159.**—(1) The Authority may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to an advocate and solicitor acting on behalf of a person who is

carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination relates.

(2) If the Authority gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a copy of it, must not, except in connection with preparing, beginning or carrying on, or in the course of, any proceedings —

- (a) use the copy or a copy of it; or
- (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

(3) The Authority may, subject to such conditions or restrictions as it may impose, give to a person a copy of a written record of the examination, or such a copy together with a copy of any related book.

### **Copies given subject to conditions**

**160.** If a copy of a written record or a book is given to a person under section 158(2) or 159(3) subject to conditions or restrictions imposed by the Authority, the person, and any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.

### **Record to accompany report**

**161.** If —

- (a) in the Authority's opinion, a statement made at an examination is relevant to any other investigation conducted under this Division;
- (b) a record of the statement was made under section 158; and
- (c) a report about the other investigation is prepared under section 151(3),

a copy of the record must accompany the report to be submitted to the Minister under section 151(3).

**Offences under this Subdivision**

**162.**—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement under section 154 or 156(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

(2) A person who, without reasonable excuse —

(a) refuses or fails to take an oath or make an affirmation when required to do so by an investigator examining the person under this Subdivision;

(b) refuses or fails to comply with a requirement of an investigator under section 158(2)(a); or

(c) refuses or fails to comply with section 159(2) or 160,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) A person who, in purported compliance with the provisions of this Subdivision, or in the course of examination of the person, provides information or makes a statement that 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 \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) It is a defence to a prosecution for an offence under subsection (3) if the defendant proves that the defendant believed on reasonable grounds that the information or statement was true and was not misleading.

(5) A person who, without reasonable excuse, obstructs or hinders the Authority or another person in the exercise of any power under this Subdivision shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

*Subdivision (3) — Powers to obtain information***Power of Authority to order production of books**

**163.** For the purpose of an investigation under this Division, the Authority may, in writing, require any person at a specified time and place to provide information or produce books relating to any matter under investigation, and that person must comply with that requirement.

**Power to enter premises without warrant**

**163A.**—(1) In connection with an investigation under this Division, any officer of the Authority who is authorised by the Authority to do so (called in this section an investigator) and such other officers or persons as the Authority has authorised in writing to accompany the investigator (each called in this section an authorised person) may enter any premises.

[34/2012]

(2) No investigator and no authorised person accompanying the investigator may enter any premises in the exercise of the powers under this section unless the investigator has given the occupier of the premises a written notice which —

- (a) gives at least 2 working days' notice of the intended entry;
- (b) indicates the subject matter and purpose of the investigation; and
- (c) indicates the nature of the offences created by section 168.

[34/2012]

(3) Subsection (2) does not apply —

- (a) if the investigation relates to an alleged or a suspected contravention of any provision of Part 12, and the investigator has reasonable grounds for suspecting that the premises are, or have been, occupied by a person who is being investigated in relation to the contravention; or
- (b) if the investigator has taken all such steps as are reasonably practicable to give notice under subsection (2)(a) but has not been able to do so.

[34/2012]

(4) Where subsection (3) applies, the power of entry conferred by subsection (1) may only be exercised upon production of —

- (a) evidence of the investigator's authorisation and the authorisation of every authorised person accompanying the investigator; and
- (b) a document containing the information referred to in subsection (2)(b) and (c).

[34/2012]

(5) An investigator or authorised person entering any premises under this section may —

- (a) take with him or her such equipment as appears to him or her to be necessary;
- (b) require any person on the premises to produce any book which the investigator or authorised person considers relates to any matter relevant to the investigation;
- (c) require any person on the premises to state, to the best of the person's knowledge and belief, where any such book is to be found; and
- (d) take any step, or issue to any person on the premises any requirement, which appears to be necessary for the purpose of preserving or preventing interference with any book which the investigator or authorised person considers relates to any matter relevant to the investigation.

[34/2012]

### **Warrant to seize books, etc.**

**164.**—(1) A Magistrate may, on the application of the Authority —

- (a) issue a warrant, if the Magistrate is satisfied that there are reasonable grounds to suspect that there is, on any particular premises, any book —
  - (i) the production of which has been required by the Authority under section 163 or by an investigator or authorised person under section 163A, but which has not been produced in compliance with that requirement; or



- (ii) which, if required by the Authority under section 163 to be produced, will be concealed, removed, tampered with or destroyed; and
- (b) if the Magistrate is also satisfied that there are reasonable grounds to suspect that there is, on those premises, any other book which relates to any matter relevant to the investigation concerned, direct that the powers exercisable under the warrant extend to that other book.

[34/2012]

(2) A warrant issued under subsection (1) authorises the Authority or any person named in the warrant, with or without assistance —

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and to break open and search anything, whether a fixture or not, in the premises;
- (c) to take possession of, or secure against interference, any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b);
- (d) to require any person to provide an explanation of any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or to state, to the best of that person's knowledge and belief, where any such book may be found;
- (e) to search any person on those premises, if there are reasonable grounds to suspect that the person has in that person's possession any book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or any equipment or article which relates to any matter relevant to the investigation concerned; and
- (f) to remove from those premises for examination any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or any equipment or article which relates to any matter relevant to the investigation concerned.

[34/2012]

(3) The Authority or any person named in the warrant to execute it may allow any equipment or article referred to in subsection (2)(f) to be retained on the premises specified in the warrant to be searched, subject to such conditions as the Authority or that person may require.

[34/2012]

(4) Any person entering any premises by virtue of a warrant issued under subsection (1) may take with him or her such equipment as appears to him or her to be necessary.

[34/2012]

(5) Where a warrant is issued under subsection (1), and there is no one present at the premises specified in the warrant to be searched when the Authority or any person named in the warrant proposes to execute the warrant, the Authority or that person must, before executing the warrant —

(a) take such steps as are reasonable in all the circumstances to inform the occupier of the premises of the intended entry into the premises; and

(b) subject to subsection (6), give the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.

[34/2012]

(6) If the Authority or any person named in the warrant to execute it is unable to inform the occupier of the premises of the intended entry into the premises, the Authority or that person must, when executing the warrant, leave a copy of the warrant in a prominent place on the premises.

[34/2012]

(7) On leaving any premises specified in a warrant issued under subsection (1), the Authority or any person named in the warrant to execute it must, if the premises are unoccupied or if the occupier of the premises is temporarily absent, leave the premises as effectively secured as the Authority or that person found the premises.

[34/2012]

(8) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

[34/2012]

(9) In this section —

“occupier”, in relation to any premises specified in a warrant issued under subsection (1), includes any person whom the Authority or any person named in the warrant to execute it reasonably believes to be the occupier of those premises;

“premises” includes any structure, building, aircraft, vehicle or vessel.

[34/2012]

### **Powers where books are produced or seized**

**165.**—(1) This section applies where —

(a) books are produced to the Authority —

(i) pursuant to a requirement of the Authority under section 163 or of an investigator or authorised person under section 163A(5); or

(ii) during an entry into any premises by an investigator or authorised person under section 163A;

(b) under a warrant issued under section 164, the Authority or a person named therein —

(i) takes possession of books; or

(ii) secures books against interference; or

(c) under a previous application of subsection (6), books are delivered into the possession of the Authority or a person authorised by it.

[34/2012]

(2) If subsection (1)(a) applies, the Authority may take possession of any of the books.

(3) The Authority or, where applicable, a person referred to in subsection (1)(b) may —

(a) inspect, and may make copies of, or take extracts from, any of the books;

(b) use, or permit the use of, any of the books for the purposes of any proceedings;

- (c) retain possession of any of the books for so long as is necessary —
- (i) for the purposes of exercising a power conferred by this section (other than subsection (5));
  - (ii) for a decision to be made about whether or not any proceedings to which the books concerned would be relevant should be instituted; or
  - (iii) for such proceedings to be instituted and carried on; and
- (d) require any book which the Authority or person referred to in subsection (1)(b) is satisfied relates to any matter relevant to an investigation under this Division, and which is stored in any electronic form, to be produced in a form which can be taken away and which is visible and legible.

[34/2012]

(4) No person is entitled, as against the Authority or, where applicable, a person referred to in subsection (1)(b) to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority or, where applicable, the person referred to in subsection (1)(b), the Authority or person —

- (a) must permit another person to inspect at all reasonable times such of the books (if any) as the second-mentioned person would be entitled to inspect if they were not in possession of the Authority or the firstmentioned person; and
- (b) may permit any other person to inspect any of the books.

(6) Unless subsection (1)(b)(ii) applies, an investigator or authorised person referred to in subsection (1)(a) or a person referred to in subsection (1)(b) may deliver any of the books into the possession of the Authority or of a person authorised by the Authority to receive them.

[34/2012]

(7) Without affecting sections 163A(5) and 164(2)(d), where subsection (1)(a) or (b) applies, the Authority, an investigator or

authorised person referred to in subsection (1)(a), a person referred to in subsection (1)(b) or a person into whose possession the books are delivered under subsection (6), may require —

- (a) if subsection (1)(a) applies, a person who so produced any of the books; or
- (b) in any other case, a person who was a party to the compilation of any of the books,

to explain to the best of his or her knowledge and belief any matter about the compilation of any of the books or to which any of the books relate.

[34/2012]

### **Powers where books not produced**

**166.** Where a person fails to comply with a requirement imposed by the Authority under section 163 to produce any book, the Authority may require the person to state, to the best of the person's knowledge and belief —

- (a) the place where such book may be found; and
- (b) the person who last had possession, custody or control of such book and the place where that person may be found.

### **Copies of or extracts from books to be admitted in evidence**

**167.—(1)** Subject to this section, a copy of or extract from a book referred to in this Subdivision that is proved to be a true copy of the book or of the relevant part of the book is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

**Offences under this Division**

**168.**—(1) A person who, without reasonable excuse, refuses or fails to comply with any requirement imposed under section 163, 163A(5), 165(3)(d) or (7) or 166, or pursuant to an authorisation referred to in section 164(2)(d), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

(2) A person who, in purported compliance with a requirement under this Subdivision, provides information or makes a statement that 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 \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that the defendant believed on reasonable grounds that the information or statement was true and not misleading.

(4) Any person, who conceals, destroys, mutilates or alters any book, equipment or article relating to a matter that the Authority is investigating or about to investigate under this Division or who, where any such book, equipment or article is within the territory of Singapore, takes or sends the book, equipment or article out of Singapore, 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 2 years or to both.

[34/2012]

(5) A person who, without reasonable excuse, obstructs or hinders the Authority in the exercise of any power under this Subdivision, or obstructs or hinders a person who is exercising any power under section 163A(1) or (5) or executing a warrant issued under section 164, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

(6) Any occupier or person in charge of any premises who fails to provide, to any person who enters those premises under section 163A(1) or under a warrant issued under section 164(1), all reasonable facilities and assistance for the effective exercise of that person's powers under section 163A(1) or (5) or under the warrant (as the case may be) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

[34/2012]

#### *Division 4 — Transfer of Evidence*

### **Interpretation of this Division**

**168A.** In this Division —

“Commercial Affairs Officer” means a Commercial Affairs Officer appointed under section 64 of the Police Force Act 2004;

“police officer” means a member of the Singapore Police Force who is deployed in the Commercial Affairs Department of that Force.

[2/2009]

### **Evidence obtained by Authority may be used in criminal investigations and proceedings**

**168B.**—(1) Despite the provisions of any written law or any rule of law, the Authority may provide any book, document, written record of any examination or other information obtained by the Authority in the exercise of its powers under this Part to —

- (a) a police officer;
- (b) a Commercial Affairs Officer; or
- (c) the Public Prosecutor,

for the purposes of any investigation into or criminal proceedings against a person for an alleged contravention of any provision under Part 12.

[2/2009]

(2) To avoid doubt, any book, document, written record of examination or other information provided by the Authority under subsection (1) is not inadmissible in any criminal proceedings by reason only that it was first obtained by the Authority in the exercise of its powers under this Act, and the admissibility thereof is to be determined in accordance with the rules of evidence under written law and any relevant rules of law.

[2/2009]

### **Evidence obtained in police investigations may be used in civil proceedings**

**168C.**—(1) Despite the provisions of any written law or any rule of law, any book, document, statement or other information obtained by a police officer or a Commercial Affairs Officer in the exercise of his or her powers under Divisions 1 and 2 of Part 4 and sections 111, 258, 260, 261 and 280 of the Criminal Procedure Code 2010 may be provided to the Authority, if the Public Prosecutor is satisfied that such information is necessary to enable the Authority to investigate or bring an action for a civil penalty order against a person in respect of a contravention of any provision in Part 12.

[2/2009; 15/2010]

(2) To avoid doubt, any book, document, statement or other information provided to the Authority under subsection (1) is not inadmissible in any civil proceedings under this Act to which the Authority is a party by reason only that it was first obtained by a police officer or a Commercial Affairs Officer in the exercise of his or her powers under the Criminal Procedure Code 2010, and the admissibility thereof is to be determined in accordance with the rules of evidence under written law and any relevant rules of law.

[2/2009]



## PART 10

ASSISTANCE TO  
FOREIGN REGULATORY AUTHORITIES**Interpretation of this Part**

**169.** In this Part, unless the context otherwise requires —

“enforce” means enforce through criminal, civil or administrative proceedings;

“enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the securities and derivatives industry of, or financial benchmarks in, the foreign country of the regulatory authority concerned;

“foreign country” means a country or territory other than Singapore;

“investigation” means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to the securities and derivatives industry of, or financial benchmarks in, the foreign country of the regulatory authority concerned;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

“supervision”, in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of —

- (a) a person operating an organised market, an intermediary or any other person regulated by the regulatory authority;

- (b) the issuance of or trading in capital markets products in the foreign country of the regulatory authority; or
- (c) a person administering a financial benchmark, or providing information in relation to a financial benchmark, in the foreign country of the regulatory authority.

[34/2012; 4/2017]

### **Application of this Part**

**169A.** This Part does not apply to any request for assistance mentioned in section 154(1) of the Monetary Authority of Singapore Act 1970.

[31/2017]

### **Conditions for provision of assistance**

**170.**—(1) The Authority may provide the assistance referred to in section 172 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request by the regulatory authority for assistance is received by the Authority on or after 6 March 2000;
- (b) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out the supervision, investigation or enforcement;
- (c) the contravention of the law or regulatory requirement to which the request relates took place on or after 6 March 2000;
- (d) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request must not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;
- (e) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (f)) any material received pursuant to the

request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;

- (f) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as the Authority may impose;
- (g) the material requested for is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;
- (h) the matter to which the request relates is of sufficient gravity;
- (i) the rendering of assistance will not be contrary to the public interest or the interest of the investing public.

(2) In subsection (1)(e) and (f), “designated third party”, in relation to a foreign country, means —

- (a) any person or body responsible for supervising the regulatory authority in question;
- (b) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or
- (c) any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under this Act.

### **Other factors to consider for provision of assistance**

**171.** In deciding whether to grant a request for assistance referred to in section 172 from a regulatory authority of a foreign country, the Authority may also have regard to the following:

- (a) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to

which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act;

- (b) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance;
- (c) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested for.

### **Assistance that may be rendered**

**172.**—(1) Despite the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a regulatory authority of a foreign country for assistance —

- (a) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;
- (b) order any person to provide to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;
- (c) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;
- (d) order any person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or
- (e) request any Ministry, Government department or statutory authority to provide to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1)(c) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1)(b), (c) or (d) has effect despite any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Nothing in this section compels an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893 —

(a) to provide or transmit any material or copy thereof that contains; or

(b) to disclose,

a privileged communication made by or to him or her in that capacity.

*[34/2012]*

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to provide or transmit any material or copy thereof that contains, or to disclose, any privileged communication is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

*[34/2012]*

(6) A person is not excused from making an oral statement pursuant to an order made under subsection (1)(d) on the ground that the statement might tend to incriminate the person but, where the person claims before making the statement that the statement might tend to incriminate the person, that statement —

(a) is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section 173; but

(b) is admissible in evidence in civil proceedings under Part 12.

**Offences under this Part**

**173.** Any person who —

- (a) without reasonable excuse refuses or fails to comply with an order under section 172(1)(b), (c) or (d);
- (b) in purported compliance with an order under section 172(1)(b) or (c), provides to the Authority or transmits to a regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or
- (c) in purported compliance with an order made under section 172(1)(d), makes a statement to the Authority that 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 \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

**Immunities**

**174.—(1)** No civil or criminal proceedings, other than proceedings for an offence under section 173, shall lie against any person for —

- (a) providing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if the person had provided or transmitted that material or copy in good faith in compliance with an order made under section 172(1)(b) or (c);
- (b) making a statement to the Authority in good faith and in compliance with an order made under section 172(1)(d); or
- (c) doing or omitting to do any act, if the person had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1)(a) or (b) is not treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

## PART 11

## INVESTOR COMPENSATION SCHEME

**Interpretation of this Part**

**175.** In this Part, “member”, in relation to an approved exchange, means a person who —

- (a) holds membership of any class or description of the approved exchange, whether or not the person holds any share in the share capital of such exchange; and
- (b) is licensed by the Authority to carry on the business of dealing in capital markets products.

[2/2009; 4/2017]

**Establishment of fidelity fund**

**176.**—(1) Each approved exchange must establish, keep and administer a fidelity fund (called in this Part a fidelity fund or fund).

[2/2009]

- (2) The assets of the fidelity fund of an approved exchange —
  - (a) are the property of the exchange;
  - (b) must be kept separate from all other property of the exchange; and
  - (c) must be held in trust for the purposes set out in this Part.

[2/2009]

**Moneys constituting fidelity fund**

**177.** The fidelity fund of an approved exchange consists of —

- (a) all moneys paid to the exchange by its members in accordance with this Part;
- (b) all moneys paid to the fund by the exchange;
- (c) all interest and profits from time to time accruing from the investment of the fund;
- (d) all moneys recovered by or on behalf of the exchange in the exercise of any right of action conferred by this Part;

- (e) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the exchange under section 194; and
- (f) all other moneys lawfully paid into the fund.

[2/2009]

### **Fund to be kept in separate bank account**

**178.** All moneys forming part of a fidelity fund must, pending the investment or application thereof in accordance with this Part, be kept in a separate bank account in Singapore.

### **Payments out of fidelity fund**

**179.** Subject to this Part, there is to be paid out of the fidelity fund of an approved exchange as required and in such order as the exchange considers proper —

- (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) all premiums payable in respect of contracts of insurance or indemnity entered into by the exchange under section 194;
- (d) all 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
- (e) all other moneys payable out of the fund in accordance with this Act.

[2/2009]

### **Accounts of fund**

**180.—(1)** An approved exchange must establish and keep proper accounts of its fidelity fund and must, within 5 months from the last



day of each financial year of that exchange, cause a balance sheet in respect of such accounts to be made out as at the last day of that financial year.

[2/2009]

(2) The approved exchange must appoint an auditor to audit the accounts of the fidelity fund.

[2/2009]

(3) The auditor appointed by the approved exchange must —

- (a) regularly and fully audit the accounts of the fidelity fund; and
- (b) 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.

[2/2009]

### **Fidelity fund to consist of amount of \$20 million, etc.**

**181.** The fidelity fund of an approved exchange must consist of an amount of not less than —

- (a) \$20 million; or
- (b) such other amount as the Authority may, by order in the *Gazette*, specify in substitution of the amount specified under paragraph (a),

to be paid to the credit of the fund on the approval of the exchange under this Act or at any time after its approval as determined by the Authority.

[2/2009]

### **Provisions if fund is reduced below minimum amount**

**182.** If the fidelity fund of an approved exchange is reduced below the minimum amount referred to in section 181, the exchange must take steps to make up the deficiency —

- (a) by transferring an amount that is equal to the deficiency from other funds of the exchange to the fidelity fund; and
- (b) in the event that there are insufficient funds to transfer under paragraph (a), by requiring each member of the

exchange to contribute to the fund such amount as the exchange may determine.

[2/2009]

### **Levy to meet liabilities**

**183.**—(1) If at any time a fidelity fund is not sufficient to satisfy the liabilities that are then ascertained of an approved exchange in relation thereto, the approved exchange —

- (a) may impose on every member a levy of such amount as it thinks fit; or
- (b) if ordered by the Authority, must impose a levy of such amount which must in the aggregate be equivalent to the amount so specified in the order.

[2/2009]

(2) The amount of the levy must be paid within the time and in the manner specified by the approved exchange either generally or in relation to any particular case.

[2/2009]

(3) No member of an approved exchange may be required to pay by way of levy under this section more than \$300,000 in the aggregate in any particular case.

[2/2009]

### **Power of approved exchange to make advances to fund**

**184.**—(1) An approved exchange may, out of its general funds, give or advance any sum of money to its fidelity fund on such terms as it thinks fit.

[2/2009]

(2) Any sum of money advanced by an approved exchange under subsection (1) may be repaid out of the fidelity fund to the general funds of the approved exchange.

[2/2009]

### **Investment of fund**

**185.** Any moneys in a fidelity fund that are not immediately required for any purpose referred to in this Part may be invested by an

approved exchange in any manner in which trustees are for the time being authorised by law to invest trust funds.

[2/2009]

### **Application of fund**

**186.**—(1) Subject to this Part, a fidelity fund must 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 —

- (a) in the course of, or in connection with, a dealing in capital markets products;
- (b) by a member of an approved exchange or by any agent of such member; and
- (c) in relation to any money or other property which, after the establishment of the fidelity fund was entrusted to or received —
  - (i) by that member or by any of its agents for or on behalf of any other person; or
  - (ii) by that member either as the sole trustee or as trustee with any other person or persons, or by any of its agents as trustee or for or on behalf of the trustees of that money or property.

[2/2009; 4/2017]

(2) Subject to this Part, the fidelity fund is to be applied for the purpose of paying to the Official Assignee or a trustee in bankruptcy within the meaning of the Insolvency, Restructuring and Dissolution Act 2018 an amount not greater than the amount that the Official Assignee or the trustee in bankruptcy (as the case may be) certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt, who is a member of an approved exchange, are insufficient to satisfy any debts arising from dealings in capital markets products that have been proved in the bankruptcy by creditors of the bankrupt member.

[2/2009; 4/2017; 40/2018]

(3) Subsection (2) applies in the case of a member of an approved exchange who has made a voluntary arrangement with the member's

creditors under Part 14 of the Insolvency, Restructuring and Dissolution Act 2018 in like manner as that subsection applies in the case of a member who has become bankrupt.

[2/2009; 40/2018]

(4) For the purposes of subsection (3) —

- (a) a reference to a trustee in bankruptcy in subsection (2) is deemed to be a reference to a nominee within the meaning of Part 14 of the Insolvency, Restructuring and Dissolution Act 2018;
- (b) a reference to debts proved in bankruptcy in subsection (2) is deemed to be a reference to debts provable in relation to a voluntary arrangement within the meaning of Part 14 of the Insolvency, Restructuring and Dissolution Act 2018; and
- (c) a reference to the bankrupt in subsection (2) is deemed to be a reference to the person who made the voluntary arrangement under Part 14 of the Insolvency, Restructuring and Dissolution Act 2018.

[40/2018]

(5) Subject to this Part, the fidelity fund is to be applied for the purpose of paying to a liquidator of a member of an approved exchange that is being wound up an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the member are insufficient to satisfy any debts arising from dealings in capital markets products that have been proved in the liquidation of the member.

[2/2009; 4/2017]

(6) Where a claim has been made for compensation in respect of a pecuniary loss under subsection (1), no claim for a payment under subsection (2) or (5) may be made in respect of the same pecuniary loss.

(7) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (2), no claim for compensation under subsection (1) or for a payment under subsection (5) may be made in respect of the same deficiency.

(8) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (5), no claim for compensation under subsection (1) or for a payment under subsection (2) may be made in respect of the same deficiency.

(9) Moneys paid under subsection (2) or (5) may only be applied by the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator (as the case may be) for the purpose of satisfying debts arising from dealings in capital markets products, and for no other purpose.

[4/2017]

(10) Subject to the provisions of this section, the amount or the sum of the amounts that may be paid out of the fidelity fund under this Part for the purpose of —

- (a) compensating pecuniary loss under subsection (1); or
- (b) making a payment under subsection (2) or (5),

must not, in respect of each member, exceed the prescribed amount.

(11) Subject to the provisions of this section —

- (a) the amount that may be paid out of the fidelity fund to each claimant under subsection (1) in relation to each member; or
- (b) the amount that the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator may pay to each creditor of a member from any amount paid to the Official Assignee, trustee in bankruptcy, nominee or liquidator (as the case may be) under subsection (2) or (5),

must not exceed the prescribed amount.

(12) For the purposes of subsections (10) and (11), any amount paid out of the fidelity fund, to the extent to which the fund is subsequently reimbursed therefor, is disregarded.

(13) In this section, “agent”, in relation to a member of an approved exchange —

- (a) means a person who is a director, an officer, an employee or a representative of the member; and

- (b) includes a person who has been, but at the time of any defalcation in question has ceased to be, a director, an officer, an employee or a representative 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, an officer, an employee or a representative of the member.

[2/2009]

(14) In this section, any reference to dealing in capital markets products is a reference to such dealing which is done or to be done —

- (a) on the approved exchange which establishes, keeps and administers the fidelity fund; or
- (b) through a trading linkage of the approved exchange with an overseas exchange.

[4/2017]

### **Claims against fund**

**187.**—(1) Subject to this Part, every person who suffers pecuniary loss referred to in section 186 is entitled to claim compensation out of the fidelity fund and to take proceedings in the General Division of the High Court under this Act against an approved exchange to establish such claim.

[2/2009; 40/2019]

(2) A person does not 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 an approved exchange.

[2/2009]

(3) Subject to this Part, the amount which any claimant is entitled to claim as compensation out of a fidelity fund is the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of and disbursements incidental to the making and proof of the claimant's claim) less the amount or value of all moneys or other benefits received or receivable by the claimant from any source other than the fund in reduction of the loss.

**Notice calling for claims against fund**

**188.**—(1) An approved 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 out of the fidelity fund, in relation to the person specified in the notice, may be made.

[2/2009]

(2) A claim for compensation out of a fidelity fund in respect of a defalcation must be made in writing to the approved exchange —

- (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.

[2/2009]

(3) Any claim which is not made in accordance with subsection (2) is barred unless the approved exchange otherwise allows.

[2/2009]

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

[2/2009]

**Power of approved exchange to settle claims**

**189.**—(1) An approved exchange may, subject to this Part, allow and settle any proper claim for compensation out of a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.

[2/2009]

(2) Subject to subsection (3), a person must not commence proceedings under this Part against an approved exchange without the consent of the approved exchange, unless —

- (a) the approved exchange has disallowed the person's claim; and

- (b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money or other property, in respect of which the defalcation was committed, available against a member of the approved 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.

[2/2009]

(3) A person who has been refused consent to commence proceedings under this Part by an approved exchange under subsection (2) may apply for leave to a Judge sitting in chambers in the General Division of the High Court who may make such order in the matter as he or she thinks fit.

[2/2009; 40/2019]

(4) An approved exchange must, after disallowing (whether wholly or in part) any claim for compensation out of a fidelity fund, serve notice of the disallowance in the prescribed form on the claimant or the claimant's solicitor.

[2/2009]

(5) No proceedings against an approved exchange in respect of a claim which has been disallowed by the exchange may be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).

[2/2009]

(6) In any proceedings brought to establish a claim —

- (a) evidence of any admission or confession by, or other evidence which would be admissible against, the member of an approved exchange or other person by whom it is alleged a defalcation was committed, is admissible to prove the commission of the defalcation, even though the member or other person is not the defendant in or a party to those proceedings; and
- (b) all defences which would have been available to that member or person are available to the approved exchange.

[2/2009]



(7) An approved exchange or, where proceedings are brought to establish a claim, the General Division of the High Court, if satisfied that the defalcation on which the claim is founded was actually committed, may allow the claim and act accordingly, even though the person who committed the defalcation has not been convicted or prosecuted therefor or that the evidence on which the approved exchange or the General Division of 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.

[2/2009; 40/2019]

### **Power of approved exchange to require production of evidence**

**190.**—(1) An approved exchange may require any person to produce and deliver any contract note, document or statement of evidence necessary to support any claim made, or necessary for the purpose either of exercising its rights against a member of an approved 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.

[2/2009]

(2) Where a person who is required under subsection (1) to produce or deliver any contract note, document or statement of evidence fails to do so, the approved exchange may disallow any claim by the person under this Part.

[2/2009]

### **Subrogation of approved exchange to rights, etc., of claimant upon payment from fund**

**191.** On payment out of a fidelity fund of any moneys in respect of any claim under this Part, the approved exchange is subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant by reason of the defalcation on which the claim was based.

[2/2009]

### **Payment of claims only from fund**

**192.** No moneys or other property belonging to an approved exchange, other than the fidelity fund, is available for the payment of

any claim under this Part, whether the claim is allowed by the approved exchange or is made the subject of an order of the General Division of the High Court.

[2/2009; 40/2019]

### **Provision where fund insufficient to meet claims or where claims exceed total amount payable**

**193.**—(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 General Division of the High Court have been made, then the amount at credit in the fund must, subject to subsection (2), be apportioned between the claimants in such manner as the approved exchange thinks equitable, and such claim must, so far as it then remains unpaid, be charged against future receipts of the fund and paid out of the fund when moneys are available therein.

[2/2009; 40/2019]

(2) Where the aggregate of all claims which have been allowed or in respect of which orders of the General Division of the High Court have been made in relation to a defalcation by or in connection with a member of an approved exchange exceeds the total amount which may, pursuant to section 186(10), be paid under this Part in respect of that member, then such total amount must be apportioned between the claimants in such manner as the approved exchange thinks equitable.

[2/2009; 40/2019]

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

### **Power of approved exchange to enter into contracts of insurance**

**194.**—(1) An approved exchange may enter into any contract with any person or body of persons, corporate or unincorporate, carrying on fidelity insurance business in Singapore whereby the approved exchange will be insured or indemnified to the extent and in the

manner provided by such contract against liability in respect of claims under this Part.

[2/2009]

(2) Any contract under subsection (1) may be entered into in relation to members generally, or in relation to any particular member or members named therein, or in relation to members generally with the exclusion of any particular member or members named therein.

(3) No action shall lie against an approved exchange or against any member or employee of an approved exchange for injury alleged to have been suffered by any other member by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to it.

[2/2009]

### **Application of insurance moneys**

**195.** No claimant against a fidelity fund has any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this Part in respect of such contract, or has any right or claim with respect to any moneys paid by the insurer in accordance with any such contract.

## PART 12

### MARKET CONDUCT

#### *Division 1 — Prohibited Conduct — Capital Markets Products*

[4/2017]

### **Application of this Division**

**196.** This Division applies to —

- (a) acts occurring within Singapore in relation to —
  - (i) securities or securities-based derivatives contracts of any corporation, whether formed or carrying on business in Singapore or elsewhere;
  - (ii) securities or securities-based derivatives contracts of any business trust;

- (iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore or elsewhere;
  - (iv) units in a collective investment scheme listed for quotation or quoted on an organised market in Singapore or elsewhere;
  - (v) derivatives contracts, whether traded in Singapore or elsewhere;
  - (vi) spot foreign exchange contracts for purposes of leveraged foreign exchange trading, whether traded in Singapore or elsewhere; or
  - (vii) any other capital markets products, whether traded in Singapore or elsewhere; and
- (b) acts occurring outside Singapore in relation to —
- (i) securities or securities-based derivatives contracts of a corporation that is formed or carrying on business in Singapore;
  - (ii) securities or securities-based derivatives contracts of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore;
  - (iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore;
  - (iv) units in a collective investment scheme listed for quotation or quoted on an organised market in Singapore;
  - (v) derivatives contracts traded in Singapore;
  - (vi) spot foreign exchange contracts for purposes of leveraged foreign exchange trading that are traded in or accessible from Singapore; or

- (vii) any other capital markets products that are traded in Singapore.

[4/2017]

### **Interpretation of this Division**

**196A.** In this Division —

- (a) “debenture” has the meaning given by section 2(1) and, in relation to a business trust, means any debenture issued by the trustee-manager of the business trust in its capacity as trustee-manager of the business trust;
- (b) a reference to a securities-based derivatives contract of a corporation in sections 196(a)(i) and (b)(i), 198, 202 and 203 is to be read as a reference to a securities-based derivatives contract of which the underlying thing or any of the underlying things are securities of the corporation; and
- (c) a reference to a securities-based derivatives contract of a business trust in sections 196(a)(ii) and (b)(ii), 198, 202 and 203 is to be read as a reference to a securities-based derivatives contract of which the underlying thing or any of the underlying things, are securities of the business trust.

[4/2017]

### **False trading and market rigging transactions**

**197.—(1)** A person must not do any thing, cause any thing to be done or engage in any course of conduct, if the person’s purpose, or any of the person’s purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) is to create a false or misleading appearance —

- (a) of active trading in any capital markets products on an organised market; or
- (b) with respect to the market for, or the price of, any capital markets products traded on an organised market.

[34/2012; 4/2017]

(1A) A person must not do any thing, cause any thing to be done or engage in any course of conduct that creates, or is likely to create, a false or misleading appearance of active trading in any capital

markets products on an organised market, or with respect to the market for, or the price of, any capital markets products traded on an organised market, if —

- (a) the person knows that doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will be likely to create, that false or misleading appearance; or
- (b) the person is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will be likely to create, that false or misleading appearance.

[34/2012; 4/2017]

(2) A person must not maintain, inflate, depress, or cause fluctuations in, the market price of any capital markets products —

- (a) by means of any purchase or sale of any capital markets products that does not involve a change in the beneficial ownership of the capital markets products; or
- (b) by any fictitious transaction or device.

[4/2017]

(3) Without limiting subsection (1), it is presumed that a person's purpose, or one of a person's purposes, is to create a false or misleading appearance of active trading in capital markets products on an organised market if the person —

- (a) effects, takes part in, is concerned in or carries out, directly or indirectly, any transaction of purchase or sale of the capital markets products, being a transaction that does not involve any change in the beneficial ownership of the capital markets products;
- (b) makes or causes to be made an offer to sell the capital markets products at a specified price, where the person has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with the person has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of the capital

markets products at a price that is substantially the same as the firstmentioned price; or

- (c) makes or causes to be made an offer to purchase the capital markets products at a specified price, where the person has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with the person has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of the capital markets products at a price that is substantially the same as the firstmentioned price.

[4/2017]

(4) The presumption under subsection (3) may be rebutted if the defendant establishes that the purpose or purposes for which the defendant did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in the capital markets products on the organised market.

[34/2012; 4/2017]

(5) For the purposes of this section, a purchase or sale of capital markets products does not involve a change in the beneficial ownership if any of the following persons has an interest in the capital markets products after the purchase or sale:

- (a) a person who had an interest in the capital markets products before the purchase or sale;
- (b) a person associated with the person mentioned in paragraph (a).

[4/2017]

(6) In any proceedings against a person for a contravention of subsection (2) in relation to a purchase or sale of capital markets products that did not involve a change in the beneficial ownership of the capital markets products, it is a defence if the defendant establishes that the purpose or purposes for which the defendant purchased or sold the capital markets products was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, the capital markets products.

[4/2017]

(7) The reference in subsection (3)(a) to a transaction of purchase or sale of the capital markets products includes —

- (a) a reference to the making of an offer to purchase or sell the capital markets products; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to purchase or sell the capital markets products.

[4/2017]

### **Market manipulation in relation to securities and securities-based derivatives contracts**

**198.**—(1) A person must not effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities, or securities-based derivatives contracts, of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities, or securities-based derivatives contracts (as the case may be) of the corporation on an organised market, with the intent to induce other persons to subscribe for, purchase or sell securities, or securities-based derivatives contracts (as the case may be) of the corporation or of a related corporation.

[4/2017]

(2) A person must not effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities, or securities-based derivatives contracts, of a business trust, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities, or securities-based derivatives contracts (as the case may be) of the business trust on an organised market, with the intent to induce other persons to subscribe for, purchase or sell securities, or securities-based derivatives contracts (as the case may be) of the business trust.

[4/2017]

(3) In this section —

- (a) a reference to transactions in securities or securities-based derivatives contracts of a corporation includes —



- (i) a reference to the making of an offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be; and
  - (ii) a reference to the making of an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be; and
- (b) a reference to transactions in securities or securities-based derivatives contracts of a business trust includes —
- (i) a reference to the making of an offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be; and
  - (ii) a reference to the making of an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities or securities-based derivatives contracts, as the case may be.

[4/2017]

### **False or misleading statements, etc.**

**199.** A person must not make a statement, or disseminate information, that is false or misleading in a material particular and is likely —

- (a) to induce other persons to subscribe for securities, securities-based derivatives contracts or units in a collective investment scheme;
- (b) to induce the sale or purchase of securities, securities-based derivatives contracts or units in a collective investment scheme, by other persons; or

- (c) to have the effect (whether significant or otherwise) of raising, lowering, maintaining or stabilising the market price of securities, securities-based derivatives contracts or units in a collective investment scheme,

if, when the person makes the statement or disseminates the information —

- (d) the person does not care whether the statement or information is true or false; or
- (e) the person knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

[4/2017]

### **Fraudulently inducing persons to deal in capital markets products**

**200.**—(1) A person must not —

- (a) by making or publishing any statement, promise or forecast that the person knows or ought reasonably to have known to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false or misleading in a material particular,

induce or attempt to induce another person to deal in capital markets products.

[4/2017]

(2) In any proceedings against a person for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1)(d), it is a defence if it is established that, at the time when the defendant so recorded or stored the information, the defendant had no reasonable grounds for expecting that the information would be available to any other person.

(3) In any proceedings against a person for a contravention of subsection (1) in relation to the dealing in capital markets products that are securities, securities-based derivatives contracts or units in a collective investment scheme, the opinion of any public accountant as to the financial position of any company at any time or during any period in respect of which he or she has made an audit or examination of the affairs of the company according to recognised audit practice is admissible, for any party to the proceedings, as evidence of the financial position of the company at that time or during that period, even though the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

[4/2017]

### **Employment of manipulative and deceptive devices**

**201.** A person must not, directly or indirectly, in connection with the subscription, purchase or sale of any capital markets products —

- (a) employ any device, scheme or artifice to defraud;
- (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, upon any person;
- (c) make any statement the person knows to be false in a material particular; or
- (d) 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.

[4/2017]

### **Bucketing**

**201A.**—(1) A person must not knowingly execute, or hold himself, herself or itself out as having executed, an order for the purchase or sale of a derivatives contract, without having effected in good faith a purchase or sale of that derivatives contract in accordance with the order or with the business rules and practices of an organised market on which the derivatives contract is to be purchased or sold.

[4/2017]

(2) A person must not knowingly execute, or hold himself, herself or itself out as having executed, an order to make a purchase or sale of a spot foreign exchange contract for purposes of leveraged foreign exchange trading, without having effected in good faith a purchase or sale in accordance with the order.

[4/2017]

### **Manipulation of price of derivatives contracts and cornering**

**201B.** A person must not, directly or indirectly —

- (a) manipulate or attempt to manipulate the price of a derivatives contract traded on an organised market, or of any underlying thing which is the subject of such derivatives contract; or
- (b) corner, or attempt to corner, any underlying thing which is the subject of a derivatives contract.

[4/2017]

### **Dissemination of information about illegal transactions**

**202.**—(1) A person must not circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to any of the following effect if any condition in subsection (2) is satisfied:

- (a) the price of any securities or securities-based derivatives contract, of a corporation will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to the securities or securities-based derivatives contracts, of that corporation (or of a related corporation) which to the person's knowledge was entered into or done in contravention of section 197, 198, 199, 200 or 201, or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201;
- (b) the price of any securities or securities-based derivatives contract, of a business trust will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to the securities or securities-based derivatives

contracts, of that business trust which to the person's knowledge was entered into or done in contravention of section 197, 198, 199, 200 or 201, or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201;

- (c) the price of a class of derivatives contracts will, or is likely to, rise or fall or be maintained by reason of any transaction entered into or to be entered into, or other act or thing done or to be done, in relation to that class of derivatives contracts by one or more persons which to the person's knowledge was entered into, or done, in contravention of section 197, 200, 201, 201A or 201B, or if entered into, or done, would be in contravention of section 197, 200, 201, 201A or 201B;
- (d) the price of a class of spot foreign exchange contracts for purposes of leveraged foreign exchange trading, will, or is likely to, rise or fall or be maintained by reason of any transaction entered into or to be entered into, or other act or thing done or to be done, in relation to that class of spot foreign exchange contracts for purposes of leveraged foreign exchange trading, by one or more persons which to the person's knowledge was entered into, or done, in contravention of section 197, 200, 201, 201A or 201B, or if entered into, or done, would be in contravention of section 197, 200, 201, 201A or 201B.

[4/2017]

- (2) For the purpose of subsection (1), the condition is either —
  - (a) the person mentioned in subsection (1), or a person associated with that person, has entered into or purports to enter into any such transaction, or has done or purports to do any such act or thing; or
  - (b) the person mentioned in subsection (1), or a person associated with that person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being

concerned in the circulation or dissemination of, the statement or information.

[4/2017]

### **Continuous disclosure**

**203.**—(1) A person to whom this subsection applies must not intentionally, recklessly or negligently fail to notify the approved exchange of such information as is required to be disclosed by the approved exchange under the listing rules or any other requirement of the approved exchange, if the person is required by the approved exchange under the listing rules or any other requirement of the approved exchange to notify the approved exchange of information on specified events or matters as they occur or arise for the purpose of the approved exchange making that information available to an organised market operated by the approved exchange.

[4/2017]

(2) Subsection (1) applies to any of the following:

- (a) an entity, the securities or securities-based derivatives contracts of which are listed for quotation on an approved exchange;
- (b) a trustee-manager of a business trust, where the securities or securities-based derivatives contracts of the business trust are listed for quotation on an approved exchange;
- (c) a responsible person of a collective investment scheme, where the units in the collective investment scheme are listed for quotation on an approved exchange.

[4/2017]

(3) Despite section 204 or 335, a contravention of subsection (1) is not an offence unless the failure to notify is intentional or reckless.

[4/2017]

### **Penalties under this Division**

**204.**—(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of any of the provisions of this Division after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 232; or
- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.

[2/2009]

### *Division 2 — Prohibited Conduct — Financial Benchmarks*

#### **Application of this Division**

**205.** This Division applies to —

- (a) acts occurring within Singapore in relation to financial benchmarks, whether administered in Singapore or elsewhere; and
- (b) acts occurring outside Singapore in relation to financial benchmarks that are administered in Singapore.

[4/2017]

#### **Interpretation of this Division**

**206.** In this Division —

“administer”, in relation to a financial benchmark, means the activity of administering the financial benchmark;

“international body” means the European Central Bank, the Organization of the Petroleum Exporting Countries, and such other international bodies as may be prescribed by regulations made under section 341;

“public authority” means —

- (a) any ministry or department of the Government, or any statutory body, or any board, commission, committee or similar body, whether corporate or

unincorporated, established under a public Act for a public purpose;

- (b) in relation to a foreign country or territory, an authority of the foreign country or territory, or any board, commission, committee or similar body, whether corporate or unincorporated, established under the law of the foreign country or territory for a public purpose; or
- (c) such other organisation as the Authority may prescribe by regulations made under section 341.

[4/2017]

### **Manipulation of financial benchmarks**

**207.**—(1) A person must not do any thing, cause any thing to be done or engage in any course of conduct, if the person's purpose, or any of the person's purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) is to create a false or misleading appearance as to the price, value, performance or rate of any financial benchmark.

[4/2017]

(2) A person must not do any thing, cause any thing to be done or engage in any course of conduct that creates, or is likely to create, a false or misleading appearance, as to the price, value, performance or rate of any financial benchmark, if —

- (a) the person knows that doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will likely create, that false or misleading appearance; or
- (b) the person is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct (as the case may be) will create, or will likely create, that false or misleading appearance.

[4/2017]

### **Exception for conduct pursuant to policy requirement**

**208.** Section 207 does not apply in respect of any thing done or to be done or any course of conduct engaged by, or by a person acting on



behalf of, a public authority or international body, whether in Singapore or elsewhere —

- (a) in respect of monetary policy;
- (b) in respect of policies with respect to exchange rates, the management of public debt or foreign exchange reserves; or
- (c) for the purpose of managing the price or value of any commodity.

[4/2017]

### **False or misleading statements**

**209.** A person must not make a statement, disseminate any information or express any opinion that is false or misleading in a material particular to a person who carries out the activity of administering a financial benchmark if —

- (a) the person intends that the statement, information or opinion be used for the purpose of administering a financial benchmark; and
- (b) the person knows or ought reasonably to have known that the statement, information or opinion is false or misleading in a material particular, or is reckless as to whether the statement, information or opinion is false or misleading in a material particular.

[4/2017]

### **Penalties under this Division**

**210.**—(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

[4/2017]

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of any of the provisions of this Division after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 232; or

(b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),  
in respect of that contravention.

[4/2017]

**211.** [Repealed by Act 4 of 2017]

**212.** [Repealed by Act 4 of 2017]

### *Division 3 — Insider Trading*

#### **Application of this Division**

**213.** This Division applies to —

- (a) acts occurring within Singapore in relation to —
- (i) securities or securities-based derivatives contracts of any corporation, whether formed or carrying on business in Singapore or elsewhere;
  - (ii) securities or securities-based derivatives contracts of any business trust;
  - (iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore or elsewhere;
  - (iv) securities-based derivatives contracts, whether traded in Singapore or elsewhere; or
  - (v) CIS units —
    - (A) listed for quotation or quoted on an organised market in Singapore or elsewhere; or
    - (B) traded in Singapore or elsewhere; and
- (b) acts occurring outside Singapore in relation to —
- (i) securities or securities-based derivatives contracts of a corporation that is formed or carries on business in Singapore;
  - (ii) securities or securities-based derivatives contracts of a business trust, the trustee of which is formed in

Singapore or carries on business on behalf of the business trust in Singapore;

- (iii) securities or securities-based derivatives contracts listed for quotation or quoted on an organised market in Singapore;
- (iv) securities-based derivatives contracts traded in Singapore; or
- (v) CIS units —
  - (A) listed for quotation or quoted on an organised market in Singapore; or
  - (B) traded in Singapore.

[4/2017]

### **Interpretation of this Division**

**214.**—(1) In this Division —

“Collective Investment Scheme unit” or “CIS unit” means —

- (a) a right or interest (however described) in a collective investment scheme (whether or not constituted as an entity), and includes an option to acquire any such right or interest in the collective investment scheme; or
- (b) a contract or arrangement under which —
  - (i) a party to the contract or arrangement is required to, or may be required to, discharge its obligations under the contract or arrangement at some future time; and
  - (ii) the value of the contract or arrangement, is determined (whether directly or indirectly, or whether wholly or in part) by reference to, derived from, or varies by reference to any of the following:
    - (A) the value or amount of units of a collective investment scheme;

(B) fluctuations in the values or amount of units of a collective investment scheme;

“debenture” has the meaning given by section 2 and, in relation to a business trust, means a debenture issued by the trustee of the business trust in its capacity as trustee of the business trust;

“financial performance”, in relation to a business trust, means the performance of the business relating to the trust property of the business trust which is managed and operated by the trustee of the business trust;

“information” includes —

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;
- (b) matters relating to the intentions, or the likely intentions, of a person;
- (c) matters relating to negotiations or proposals with respect to —
  - (i) commercial dealings; or
  - (ii) dealing in capital markets products that are securities, securities-based derivatives contracts or CIS units;
- (iii) *[Deleted by Act 4 of 2017]*
- (d) information relating to the financial performance of a corporation or business trust, or otherwise;
- (e) information that —
  - (i) a person proposes to enter into, or had previously entered into, one or more transactions or agreements in relation to any securities, securities-based derivatives contract or CIS unit; or
  - (ii) a person has prepared or proposes to issue a statement relating to any securities,

securities-based derivatives contract or CIS unit; and

(f) matters relating to the future;

“persons who commonly invest”, in relation to investment in any kind of securities, securities-based derivatives contracts or CIS units, means a section of the public that is accustomed, or would be likely, to deal in securities, securities-based derivatives contracts or CIS units, or in a class of securities, securities-based derivatives contracts or CIS units, of that kind;

“purchase”, in relation to securities-based derivatives contracts or CIS units, includes a contract or arrangement under which a party acquires an option or right from another party, acquiring the option or right under the contract, or taking an assignment of the option or right, whether or not on another’s behalf;

“sell”, in relation to securities-based derivatives contracts or CIS units, includes a contract or arrangement under which a party acquires an option or right from another party —

(a) grant or assign the option or right; or

(b) take, or cause to be taken, such action as releases the option or right,

whether or not on another’s behalf;

“trust property” has the meaning given by section 2 of the Business Trusts Act 2004.

[2/2009; 4/2017]

(2) In this Division —

(a) a reference to a securities-based derivatives contract of a corporation in sections 213(a)(i) and (b)(i) and 218 is a reference to a securities-based derivatives contract of which the underlying thing, or any of the underlying things, is a security of that corporation; and

(b) a reference to a securities-based derivatives contract of a business trust in sections 213(a)(ii) and (b)(ii) and 218 is a

reference to a securities-based derivatives contract of which the underlying thing, or any of the underlying things, is a security of that business trust.

[4/2017]

### **Information generally available**

**215.** For the purposes of this Division, information is generally available if —

- (a) it consists of readily observable matter;
- (b) without limiting paragraph (a) —
  - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of any of the following classes of persons:
    - (A) persons who commonly invest in securities of a kind of which the price or value might be affected by the information;
    - (B) persons who commonly invest in securities-based derivatives contracts of a kind of which the price or value might be affected by the information;
    - (C) persons who commonly invest in CIS units of a kind of which the price or value might be affected by the information; and
  - (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or
- (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:
  - (i) information referred to in paragraph (a);
  - (ii) information made known as referred to in paragraph (b)(i).

[4/2017]

**Material effect on price or value of securities, securities-based derivatives contracts or CIS units**

**216.** For the purposes of this Division, a reasonable person would be taken to expect information to have a material effect on the price or value of securities, securities-based derivatives contracts or CIS units, if the information would, or would be likely to, influence any of the following persons in deciding whether or not to subscribe for, buy or sell those securities, securities-based derivatives contracts or CIS units:

- (a) the persons who commonly invest in the securities, securities-based derivatives contracts or CIS units;
- (b) any one or more classes of persons who constitute the persons mentioned in paragraph (a).

[4/2017]

**Trading and procuring trading in securities, securities-based derivatives contracts or CIS units**

**217.—**(1) For the purposes of this Division, trading in any securities, securities-based derivatives contracts or CIS units, that is ordinarily permitted on an organised market is taken to be permitted on that organised market even though trading in such securities, securities-based derivatives contracts or CIS units (as the case may be) on that organised market is suspended.

[4/2017]

(2) For the purposes of this Division but without limiting the meaning that the expression “procure” has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the firstmentioned person is taken to procure the act or omission by the other person.

**Prohibited conduct by connected person in possession of inside information**

**218.—**(1) Subject to this Division, where —

- (a) a person who is connected to a corporation possesses information concerning that corporation that is not generally available but, if the information were generally

available, a reasonable person would expect it to have a material effect on the price or value of securities or securities-based derivatives contracts of that corporation; and

- (b) the connected person knows or ought reasonably to know that —
- (i) the information is not generally available; and
  - (ii) if it were generally available, it might have a material effect on the price or value of those securities or securities-based derivatives contracts of that corporation,

subsections (2), (3), (4), (5) and (6) apply.

[4/2017]

(1A) Subsections (2), (3), (4A), (5) and (6) apply if —

- (a) a person is connected to —
- (i) a corporation that is the trustee of, or manages or operates, a business trust; or
  - (ii) a corporation that is the trustee or manager of a collective investment scheme —
    - (A) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and
    - (B) all or any units of which are listed on an approved exchange;
- (b) the connected person possesses —
- (i) where the person is connected to a corporation mentioned in paragraph (a)(i), any information concerning the corporation or business trust that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities or securities-based derivatives contracts of the corporation or business trust; or



- (ii) where the person is connected to a corporation mentioned in paragraph (a)(ii), any information concerning the corporation or collective investment scheme that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities or securities-based derivatives contracts of the corporation, or the price or value of CIS units in the scheme; and
- (c) the connected person knows or ought reasonably to know that —
  - (i) the information is not generally available; and
  - (ii) if it were generally available, it might have a material effect on —
    - (A) where the person is connected to a corporation mentioned in paragraph (a)(i), the price or value of securities or securities-based derivatives contracts of the corporation or business trust; or
    - (B) where the person is connected to a corporation mentioned in paragraph (a)(ii), the price or value of securities or securities-based derivatives contracts of the corporation, or the price or value of CIS units in the collective investment scheme.

[4/2017]

(2) The connected person must not (whether as principal or agent) —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell —
  - (i) the securities or securities-based derivatives contracts mentioned in subsection (1); or
  - (ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A); or

- (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell —
- (i) the securities or securities-based derivatives contracts mentioned in subsection (1); or
  - (ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A).

[4/2017]

(3) The connected person must not, directly or indirectly, communicate the information mentioned in subsection (1) or (1A), or cause the information to be communicated, to another person if the connected person knows, or ought reasonably to know, that the other person would or would be likely to —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell —
- (i) the securities or securities-based derivatives contracts mentioned in subsection (1); or
  - (ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A); or
- (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell —
- (i) the securities or securities-based derivatives contracts mentioned in subsection (1); or
  - (ii) the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1A).

[4/2017]

(4) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation referred to in subsection (1), where the prosecution or plaintiff proves that the connected person was at the material time —

- (a) in possession of information concerning the corporation to which the person was connected; and

(b) the information was not generally available,  
it is presumed, until the contrary is proved, that the connected person knew at the material time that —

- (c) the information was not generally available; and
- (d) if the information were generally available, it might have a material effect on the price or value of securities or securities-based derivatives contracts of that corporation.

[4/2017]

(4A) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation mentioned in subsection (1A)(a)(i) or (ii), the presumption in subsection (4B) applies until the contrary is proved, if the prosecution or plaintiff proves that the connected person was at the material time —

- (a) in possession of information concerning the corporation, business trust or collective investment scheme, as the case may be; and
- (b) the information was not generally available.

[4/2017]

(4B) For the purpose of subsection (4A), the presumption is the connected person knew at the material time that —

- (a) the information was not generally available; and
- (b) if the information were generally available, it might have a material effect on —

- (i) where the person is connected to a corporation mentioned in subsection (1A)(a)(i), the price or value of securities or securities-based derivatives contracts of the corporation or business trust; or

- (ii) where the person is connected to a corporation mentioned in subsection (1A)(a)(ii), the price or value of the securities or securities-based derivatives contracts of the corporation or the price or value of CIS units in the collective investment scheme.

[4/2017]

(5) In this Division —

- (a) “connected person” means a person referred to in subsection (1) or (1A) who is connected to a corporation; and
- (b) a person is connected to a corporation if —
  - (i) the person is an officer of that corporation or of a related corporation;
  - (ii) the person is a substantial shareholder in that corporation or in a related corporation; or
  - (iii) the person occupies a position that may reasonably be expected to give the person access to information of a kind to which this section applies by virtue of —
    - (A) any professional or business relationship existing between the person (or the person’s employer or a corporation of which the person is an officer) and that corporation or a related corporation; or
    - (B) being an officer of a substantial shareholder in that corporation or in a related corporation.

[2/2009]

(6) In subsection (5), “officer”, in relation to a corporation, includes —

- (a) a director, secretary or employee of the corporation;
- (b) a receiver, or receiver and manager, of property of the corporation;
- (c) a judicial manager of the corporation;
- (d) a liquidator of the corporation; and
- (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person.

**Prohibited conduct by other persons in possession of inside information**

**219.**—(1) Subject to this Division, where —

- (a) a person who is not a connected person referred to in section 218 (called in this section the insider) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities, securities-based derivatives contracts or CIS units; and
- (b) the insider knows that —
  - (i) the information is not generally available; and
  - (ii) if it were generally available, it might have a material effect on the price or value of those securities, securities-based derivatives contracts or CIS units, as the case may be,

subsections (2) and (3) apply.

[4/2017]

(2) The insider must not (whether as principal or agent) —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivatives contracts or CIS units, as the case may be; or
- (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities, securities-based derivatives contracts or CIS units, as the case may be.

[4/2017]

(3) The insider must not, directly or indirectly, communicate the information mentioned in subsection (1), or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1); or
- (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, the securities, securities-based derivatives contracts or CIS units mentioned in subsection (1).

[4/2017]

### **Not necessary to prove intention to use**

**220.**—(1) To avoid doubt, in any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or plaintiff to prove that the accused person or defendant intended to use the information referred to in section 218(1)(a) or (1A)(a) or 219(1)(a) in contravention of section 218 or 219, as the case may be.

(2) In any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or plaintiff to prove the absence of facts or circumstances which if they existed would, by virtue of sections 222 to 230 or any regulations made under section 341, preclude the act from constituting a contravention of section 218 or 219, as the case may be.

### **Penalties under this Division**

**221.**—(1) A person who contravenes section 218 or 219, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after —

- (a) a court has made an order against the person for the payment of a civil penalty under section 232; or

- (b) the person has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5),

in respect of that contravention.

[2/2009]

### **Exception for redemption of units in collective investment scheme**

**222.** Sections 218(2) and 219(2) do not apply in respect of the redemption of units in a collective investment scheme by a trustee or manager under a trust deed relating to that collective investment scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets less —

- (a) any liabilities of that collective investment scheme to which the units relates; and
- (b) any reasonable charge for purchasing the units.

### **Exception for underwriters**

**223.—**(1) Sections 218(2) and 219(2) do not apply in respect of —

- (a) subscribing for, or purchasing, securities, securities-based derivatives contracts or CIS units under an underwriting agreement or a sub-underwriting agreement;
- (b) entering into an agreement referred to in paragraph (a); or
- (c) selling securities, securities-based derivatives contracts or CIS units subscribed for, or purchased, under an agreement referred to in paragraph (a).

[4/2017]

(2) Sections 218(3) and 219(3) do not apply in respect of the communication of information in relation to securities, securities-based derivatives contracts or CIS units —

- (a) to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any

such securities, securities-based derivatives contracts or CIS units; or

(b) by a person who may be required under an underwriting agreement to subscribe for, or purchase, any such securities, securities-based derivatives contracts or CIS units if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:

(i) enter into a sub-underwriting agreement in relation to any such securities, securities-based derivatives contracts or CIS units;

(ii) subscribe for, or purchase, any such securities, securities-based derivatives contracts or CIS units.

[4/2017]

### **Exception for purchase pursuant to legal requirement**

**224.**—(1) Sections 218(2) and 219(2) do not apply in respect of the purchase of securities, securities-based derivatives contracts or CIS units pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

[4/2017]

(2) Sections 218(2) and 219(2) do not apply in respect of the sale of securities, securities-based derivatives contracts or CIS units pursuant to any requirement imposed by the Government or any requirement imposed under any written law or order of court.

[4/2017]

### **Exception for information communicated pursuant to legal requirement**

**225.** Sections 218(3) and 219(3) do not apply in respect of the communication of information pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.



**Attribution of knowledge within corporations**

**226.**—(1) For the purposes of this Division —

- (a) a corporation is taken to possess any information which an officer of the corporation possesses and which came into his or her possession in the course of the performance of duties as such an officer; and
- (b) if an officer of a corporation knows or ought reasonably to know any matter or thing because he or she is an officer of the corporation, it is to be presumed, until the contrary is proved, that the corporation knows or ought reasonably to know that matter or thing.

(2) A corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement at any time merely because of information in the possession of an officer of the corporation if —

- (a) the decision to enter into the transaction or agreement was taken on its behalf by a person other than that officer;
- (b) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person who made the decision and that no advice with respect to the transaction or agreement was given to that person by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

**Attribution of knowledge within partnerships and limited liability partnerships**

**227.**—(1) For the purposes of this Division —

- (a) a partner of a partnership or a limited liability partnership (as the case may be) is taken to possess any information —
  - (i) which another partner of the partnership or limited liability partnership (as the case may be) possesses and which came into such other partner's possession

in his or her capacity as a partner of the partnership or limited liability partnership (as the case may be); or

- (ii) which an employee of the partnership or a manager of a limited liability partnership (as the case may be) possesses and which came into the possession of such an employee or manager in the course of the performance of his or her duties as such an employee or manager; and

- (b) if a partner or employee of a partnership or a partner, manager or employee of a limited liability partnership (as the case may be) knows or ought reasonably to know any matter or thing in his or her capacity as such a partner, manager or employee, it is to be presumed that every partner of the partnership or limited liability partnership (as the case may be) knows or ought reasonably to know that matter or thing.

(2) The partners of a partnership or limited liability partnership (as the case may be) do not contravene section 218(2) or 219(2) by entering into a transaction or agreement at any time merely because one or more (but not all) of the partners, or a manager or managers, or an employee or employees, of the partnership or limited liability partnership (as the case may be) are in actual possession of information if —

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership or limited liability partnership by any one or more of the following persons:
  - (i) a partner who is taken to have possessed the information merely because another partner, or a manager or employee, of the partnership or limited liability partnership, was in possession of the information;
  - (ii) an employee of the partnership or limited liability partnership or a manager of the limited liability partnership who was not in possession of the information;

- (b) the partnership or limited liability partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

(3) A partner of a partnership or limited liability partnership (as the case may be) does not contravene section 218(2) or 219(2) by entering into a transaction or agreement otherwise than on behalf of the partnership or limited liability partnership merely because he or she is taken to possess information that is in the possession of another partner, a manager or an employee of the partnership.

### **Exception for knowledge of individual's own intentions or activities**

**228.** An individual does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivatives contracts or CIS units merely because the individual is aware that the individual proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

### **Exception for corporations and its officers, etc.**

**229.—**(1) A corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivatives contracts or CIS units merely because the corporation is aware that it proposes to enter into or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

(2) Subject to subsection (3), a corporation does not contravene section 218(2) or 219(2) by entering into a transaction or agreement in relation to securities, securities-based derivatives contracts or CIS units merely because an officer of the corporation is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

(3) Subsection (2) does not apply unless the officer of the corporation mentioned in that subsection became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer.

(4) Subject to subsection (5), a person does not contravene section 218(2) or 219(2) by entering into a transaction or agreement on behalf of a corporation in relation to securities, securities-based derivatives contracts or CIS units merely because the person is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities, securities-based derivatives contracts or CIS units.

[4/2017]

(5) Subsection (4) does not apply unless the person became aware of the matters referred to in that subsection in the course of the performance of duties as an officer of the corporation or in the course of acting as an agent of the corporation.

### **Unsolicited transactions by holder of capital markets services licence and representatives**

**230.**—(1) The holder of a capital markets services licence to deal in capital markets products, or a representative of such a holder, does not contravene section 218(2) or 219(2) by subscribing for, purchasing or selling, or entering into an agreement to subscribe for, purchase or sell, securities, securities-based derivatives contracts or CIS units if —

- (a) the holder or representative entered into the transaction or agreement concerned on behalf of another person (called in this section the principal) under a specific instruction by

the principal to enter into that transaction or agreement which was not solicited by the holder or representative;

- (b) the holder or representative has not given any advice to the principal in relation to the transaction or agreement or otherwise sought to procure the principal's instructions to enter into the transaction or agreement; and
- (c) the principal is not an associate of the holder or representative.

[2/2009; 4/2017]

(2) Nothing in this section affects the application of section 218(2) or 219(2) in relation to the principal.

### **Parity of information defences**

**231.**—(1) In any proceedings against a person for a contravention of section 218(2) or 219(2) because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the firstmentioned person's possession, it is a defence if the court is satisfied that —

- (a) the information came into the firstmentioned person's possession solely as a result of the information having been made known as referred to in section 215(b)(i); or
- (b) the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.

(2) In an action against a person for a contravention of section 218(3) or 219(3) because the person communicated information, or caused information to be communicated, to another person, it is a defence if the court is satisfied that —

- (a) the information came into the firstmentioned person's possession solely as a result of the information having been made known as referred in section 215(b)(i); or
- (b) the other person knew, or ought reasonably to have known, of the information before the information was communicated.

*Division 4 — Civil Liability***Civil penalty**

**232.**—(1) Whenever it appears to the Authority that any person has contravened any provision in this Part, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the person to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part, the court may make an order against the person for the payment of a civil penalty of a sum not exceeding the greater of the following:

(a) 3 times —

(i) the amount of the profit that the person gained as a result of the contravention; or

(ii) the amount of the loss that the person avoided as a result of the contravention;

(b) \$2 million.

[4/2017]

(3) The civil penalty ordered under subsection (2) must not be less than —

(a) in the case where the person is a corporation, \$100,000; and

(b) in any other case, \$50,000.

[4/2017]

(4) Despite subsections (2) and (3), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of a contravention of a provision in this Part and the order may be made on such terms as may be agreed between the Authority and the defendant.

(5) Nothing in this section prevents the Authority from entering into an agreement with any person to pay, with or without admission

of liability, a civil penalty within the limits referred to in subsection (2) or (3) for a contravention of any provision in this Part.

(6) A civil penalty imposed under this section must be paid into the Consolidated Fund and is to be treated as a judgment debt due to the Government for the purposes of section 10 of the Government Proceedings Act 1956.

[34/2012; 4/2017]

(7) If the person fails to pay the civil penalty imposed on the person within the time specified in the court order referred to in subsection (4) or specified under the agreement referred to in subsection (5), the Authority may recover the civil penalty on behalf of the Government as though the civil penalty were a judgment debt due to the Authority.

[34/2012]

(8) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, is also available to a defendant to an action under this section in respect of that contravention.

### **Action under section 232 not to commence, etc., in certain situations**

**233.**—(1) An action under section 232 must not be commenced after the expiration of 6 years from the date of the contravention of any of the provisions in this Part.

(2) An action under section 232 must not be commenced if the person has been convicted or acquitted in criminal proceedings for the contravention of any of the provisions in this Part, except where the person has been acquitted on the ground of the withdrawal of the charge against the person.

(3) An action under section 232 must be stayed after criminal proceedings have been commenced against the person for the contravention of any of the provisions in this Part, and may thereafter be continued only if —

- (a) that person has been discharged in respect of that contravention and the discharge does not amount to an acquittal; or

- (b) the charge against the person in respect of that contravention has been withdrawn.

### Civil liability

**234.**—(1) A person who has acted in contravention of any of the provisions in this Part (called in this section and sections 235 and 236 the contravening person) is, if the contravening person had gained a profit or avoided a loss as a result of that contravention, whether or not the contravening person had been convicted or had a civil penalty imposed on the contravening person in respect of that contravention, liable to pay compensation to any person (called in this section and sections 235 and 236 the claimant) who —

- (a) had been dealing in capital markets products of the same description contemporaneously with the contravention; and
- (b) had suffered loss by reason of the difference between —
- (i) the price at which the capital markets products were dealt in contemporaneously with the contravention; and
- (ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —
- (A) in the case where the contravening person had acted in contravention of section 218 or 219, the information mentioned in section 218(1) or (1A) or 219(1) (as the case may be) had been generally available; or
- (B) in any other case, the contravention had not occurred.

[2/2009; 34/2012; 4/2017]

(1A) Without affecting subsection (1), the contravening person is, whether or not the contravening person had gained a profit or avoided a loss as a result of that contravention, and whether or not the contravening person had been convicted or had a civil penalty



imposed on the contravening person in respect of that contravention, liable to pay compensation to the claimant, if —

- (a) the contravening person has contravened section 199, 200 or 201 in connection with any dealing in capital markets products, by —
  - (i) making, disseminating or publishing any false, misleading or deceptive statement, information, promise or forecast; or
  - (ii) concealing or omitting to state any material fact; and
- (b) the claimant —
  - (i) in reliance on that statement, information, promise or forecast or in ignorance of that concealed or omitted material fact, had (whether contemporaneously with the contravention or otherwise) been dealing in capital markets products of the same description; and
  - (ii) had suffered loss.

[34/2012; 4/2017]

(2) The amount of compensation that the contravening person is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant referred to in subsection (1)(b), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L, up to the maximum amount recoverable.

[34/2012]

(2A) The amount of compensation that the contravening person is liable to pay to the claimant under subsection (1A) is —

- (a) in any case where the claimant had contemporaneously with the contravention been dealing in capital markets products of the same description, and had suffered the loss referred to in subsection (1)(b), any one of the following amounts that is elected by the claimant:

- (i) the amount of the loss suffered by the claimant referred to in subsection (1)(b), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L, up to the maximum amount recoverable;
  - (ii) the amount of any loss that reasonably results from the claimant's reliance on the statement, information, promise or forecast referred to in subsection (1A)(a)(i) or ignorance of the concealed or omitted material fact referred to in subsection (1A)(a)(ii), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L; or
- (b) in any other case, the amount of any loss that reasonably results from the claimant's reliance on the statement, information, promise or forecast referred to in subsection (1A)(a)(i) or ignorance of the concealed or omitted material fact referred to in subsection (1A)(a)(ii), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L.

(3) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, is also available to a defendant to an action under this section in respect of the contravention.

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the dealing in which the loss occurred.

*[34/2012; 4/2017]*

(5) For the purposes of this section, in determining whether any dealing in capital markets products took place contemporaneously with the contravention, the court is to take into account the following matters:

- (a) the volume of capital markets products of the same description dealt in between the date and time of the contravention, and the date and time of the dealing in capital markets products;
- (b) if the contravention was effected by a transaction or transactions involving the dealing in capital markets products, the date on and time at which the transaction or transactions were cleared and settled;
- (c) whether the dealing in capital markets products took place before or after the contravention;
- (d) in the case of a contravention under section 203, 218 or 219, whether the dealing in capital markets products that are securities, securities-based derivatives contracts or CIS units as defined in section 214(1) (as the case may be) took place before or after the information to which the contravention relates became generally known;
- (e) such other factors and developments, whether in Singapore or elsewhere, as the court may consider relevant.

*[34/2012; 4/2017]*

(6) In this section and section 236, “maximum recoverable amount”, in respect of each contravention by a contravening person means —

- (a) the amount of the profit that the contravening person gained; or
- (b) the amount of the loss that the contravening person avoided,

as a result of the contravention, after deducting all amounts of compensation that the contravening person had previously been ordered by a court to pay, in respect of the same contravention, to other claimants (each being a claimant whose claim is one where the amount of compensation that the contravening person is liable to pay is specified under subsection (2) or (2A)(a)(i)).

[34/2012]

### **Action under section 234 not to commence, etc., in certain situations**

**235.**—(1) Except with the leave of court, no action under section 234 may be brought against the contravening person in respect of a contravention of any of the provisions in this Part which resulted in the contravening person gaining a profit or avoiding a loss after the commencement of —

- (a) criminal proceedings under this Part against the contravening person for the same contravention; or
- (b) an action under section 232 against the contravening person for the same contravention.

(2) Any action under section 234 against the contravening person in respect of a contravention of any of the provisions in this Part which resulted in the contravening person gaining a profit or avoiding a loss, being an action that is pending on the date of commencement of —

- (a) criminal proceedings under this Part against the contravening person for the same contravention; or
- (b) an action under section 232 against the contravening person for the same contravention,

must be stayed, and may not thereafter be continued except with the leave of court.

(3) Leave under subsection (1) or (2) may not be granted if a date has been fixed by a court under section 236(1) for the filing of claims,

and in that event the claimant to the proposed action or the action that has been stayed (as the case may be) must comply with such directions relating to the filing and proof of the claimant's claim under section 236 as that court may issue in the claimant's case.

**Civil liability in event of conviction, etc.**

**236.**—(1) Despite section 234, where the contravening person —

- (a) has been convicted of an offence under this Part; or
- (b) has an order for the payment of a civil penalty made against the contravening person under section 232, other than by way of a default judgment or a consent order made with or without admission of contravention under section 232(4),

in respect of the contravention of any of the provisions in this Part, the court which convicted the contravening person or made the order against the contravening person (called in this section the relevant court) may, after the conviction or the order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims for compensation in respect of that contravention.

*[2/2009; 34/2012]*

(2) For the purposes of subsection (1), the relevant court must not fix a date that is earlier than 3 months from the date the conviction or the order imposing the civil penalty (as the case may be) has been made final.

(3) Subject to subsection (3A), the relevant court may, after the expiry of the date fixed under subsection (1), make an order against the contravening person to pay compensation to each claimant who has filed and proven that claimant's claim for compensation.

*[34/2012]*

(3A) Where the amount of compensation that a claimant would have been entitled to if the claimant had brought an action under section 234 is specified under section 234(2) or (2A)(a)(i), the compensation amount ordered by the relevant court for that claimant is equal to the lesser of the following amounts:

- (a) the amount of compensation which that claimant has proven to the satisfaction of the court that the claimant

would have been entitled to if the claimant had brought an action under section 234 against the contravening person;

- (b) the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (a) bears to the total amount of all other claims (each being a claim the claimant of which is one who, if the claimant had brought an action under section 234, would have been entitled to the amount of compensation specified under section 234(2) or (2A)(a)(i)) which have been proved to the court.

[34/2012]

- (4) For the purposes of this section, a conviction is made final if —

- (a) the conviction is upheld on appeal, revision or otherwise;
- (b) the conviction is not subject to further appeal;
- (c) no notice of appeal against the conviction is lodged within the time prescribed by sections 377 and 378 of the Criminal Procedure Code 2010; or
- (d) any appeal against the conviction is withdrawn.

[15/2010]

- (5) For the purposes of this section, an order imposing a civil penalty is made final if —

- (a) the order is not set aside on appeal or revision or is varied only as to the amount of the civil penalty to be imposed;
- (b) the order is not subject to further appeal;
- (c) no notice of appeal against the imposition of the penalty is lodged within the time prescribed by Rules of Court made under section 238; or
- (d) any appeal against the imposition of the penalty is withdrawn.

*Division 5 — Attributed Liability***Interpretation of this Division**

**236A.** In this Division, unless the context otherwise requires —

“defendant” means an individual liable to an order for a civil penalty under section 236H in respect of a contravention of any provision in this Part committed by a corporation, partnership, limited liability partnership or unincorporated association;

“defendant corporation” means a corporation —

- (a) liable to be punished under section 236B(1) or to an order for a civil penalty under section 236B(3) in respect of a contravention of any provision in this Part committed by its employee or officer; or
- (b) liable to an order for a civil penalty under section 236C(1);

“defendant partnership” means a partnership or limited liability partnership —

- (a) liable to be punished under section 236E(1) or to an order for a civil penalty under section 236E(3) in respect of a contravention of any provision in this Part committed by a partner or employee of the partnership or a partner, manager or employee of the limited liability partnership, as the case may be; or
- (b) liable to an order for a civil penalty under section 236F(1);

“partnership”, in Subdivision (2), means the partnership at the time of the contravention by the contravening person referred to in section 236E(1) or 236F(1), as the case may be.

[2/2009]

*Subdivision (1) — Corporations***Liability of corporation when employee or officer commits contravention with consent or connivance of corporation**

**236B.**—(1) Where an offence of contravening any provision in this Part is proved to have been committed by an employee or an officer of a corporation (called in this section the contravening person) —

- (a) with the consent or connivance of the corporation; and
- (b) for the benefit of the corporation,

the corporation shall be guilty of that offence as if the corporation had committed the contravention, and shall be liable to be proceeded against and punished accordingly.

[2/2009]

(2) No proceedings shall be instituted against a corporation under subsection (1) after —

- (a) a court has made an order against the corporation for the payment of a civil penalty under subsection (3); or
- (b) the corporation has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5) (as that provision is applied to an action under subsection (3) by subsection (6)),

in respect of the same contravention.

[2/2009]

(3) Where it appears to the Authority that a corporation is liable to be punished under subsection (1) for a contravention committed by a contravening person, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the corporation to seek an order for a civil penalty in respect of that contravention as if the corporation had committed the contravention, whether or not such action is brought against the contravening person.

[2/2009]

(4) If the court in subsection (3) is satisfied on a balance of probabilities that the corporation is liable to be punished under subsection (1) for a contravention of any provision of this Part, the court may make an order against the corporation for the payment of a



civil penalty of a sum not less than \$100,000 but not exceeding the greater of the following:

(a) 3 times —

- (i) the amount of the profit that the corporation gained as a result of the contravention by the contravening person; or
- (ii) the amount of the loss that the corporation avoided as a result of the contravention by the contravening person;

(b) \$2 million.

[4/2017]

(5) [Deleted by Act 4 of 2017]

(6) Sections 232(4) to (7) and 233 apply in relation to an action brought against a corporation under subsection (3) as they apply in relation to an action under section 232.

[2/2009]

(7) Any defence that would be available to —

- (a) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or
- (b) the corporation if it were prosecuted under subsection (1) in respect of that contravention,

is also available to the corporation in an action under subsection (3) in respect of that contravention.

[2/2009]

(8) The means by which consent or connivance of the corporation under subsection (1) or (3) may be established include proving that —

- (a) the corporation's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention;
- (b) a high managerial agent of the corporation intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention; or

- (c) a corporate culture existed within the corporation that directed or encouraged non-compliance with the relevant provision.

[2/2009]

- (9) In this section —

“board of directors” means the body (by whatever name called) exercising the executive authority of the corporation;

“corporate culture” means an attitude, policy, rule, course of conduct or practice existing within the corporation generally or in the part of the corporation in which the relevant activity takes place;

“high managerial agent” means an employee, agent or officer of the corporation with duties of such responsibility that his or her conduct may fairly be assumed to represent the corporation’s policy.

[2/2009]

### **Civil penalty when corporation fails to prevent or detect contravention by employee or officer**

**236C.**—(1) A corporation which fails to prevent or detect a contravention of any provision in this Part committed by an employee or officer of the corporation (called in this section the contravening person), which contravention is —

(a) committed for the benefit of the corporation; and

(b) attributable to the negligence of the corporation,

commits a contravention and shall be liable to an order for a civil penalty under this section.

[2/2009]

(2) Where it appears to the Authority that a corporation has committed a contravention under subsection (1), the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the corporation to seek an order for a civil penalty.

[2/2009]

(3) If the court is satisfied on a balance of probabilities that the corporation has committed a contravention under subsection (1), the

court may make an order against the corporation for the payment of a civil penalty of a sum not less than \$100,000 but not exceeding the greater of the following:

- (a) 3 times —
  - (i) the amount of the profit that the corporation gained as a result of the contravention by the contravening person; or
  - (ii) the amount of the loss that the corporation avoided as a result of the contravention by the contravening person;
- (b) \$2 million.

[4/2017]

(4) [Deleted by Act 4 of 2017]

(5) Sections 232(4) to (7) and 233 apply in relation to an action brought against a corporation under subsection (2) as they apply in relation to an action under section 232.

[2/2009]

(6) Any defence that would be available to the contravening person if the contravening person were prosecuted for the contravening person's contravention is also available to the corporation in an action under subsection (2) in respect of its failure to prevent or detect that contravention.

[2/2009]

(7) For the purposes of subsection (1), in determining whether a contravention is attributable to the negligence of a corporation, the court is to take into account the following matters:

- (a) whether the corporation has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;
- (b) whether the corporation has consistently enforced compliance with its policies and procedures referred to in paragraph (a);
- (c) such other factors as the court may consider relevant.

[2/2009]

**Civil liability of corporation for contravention by employee or officer**

**236D.**—(1) A defendant corporation which has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by the contravening person referred to in section 236B(1) or 236C(1) is, whether or not it had been convicted or had a civil penalty imposed on it, liable to pay compensation to any person (called in this section the claimant) who —

- (a) had been dealing in capital markets products of the same description contemporaneously with the contravention by the contravening person; and
- (b) had suffered loss by reason of the difference between —
  - (i) the price at which the capital markets products were dealt in contemporaneously with the contravention by the contravening person; and
  - (ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —
    - (A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) (as the case may be) had been generally available; or
    - (B) in any other case, the contravention by the contravening person had not occurred.

*[2/2009; 34/2012; 4/2017]*

(2) The amount of compensation that the defendant corporation is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

- (a) by the contravening person under an order of court or an agreement to pay; or

(b) under an order for disgorgement under section 236L, to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

[2/2009]

(3) Any defence that would be available to —

- (a) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or
- (b) the defendant corporation if it were prosecuted under section 236B(1) or had an action brought against it under section 236C(2),

is also available to the defendant corporation in an action under this section in respect of that contravention.

[2/2009]

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

[2/2009; 4/2017]

(5) In determining whether the dealing took place contemporaneously with the contravention by the contravening person, the court is to take into account the matters set out in section 234(5).

[2/2009; 4/2017]

(6) In this section, “maximum recoverable amount” means —

- (a) the amount of profit that the defendant corporation gained; or
- (b) the amount of the loss that it avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant corporation had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[2/2009]

*Subdivision (2) — Partnerships and limited liability partnerships*

**Liability of partnership and limited liability partnership when partner, etc., commits contravention with consent or connivance**

**236E.**—(1) Where an offence of contravening any provision of this Part is proved to have been committed by a partner or employee of a partnership or a partner, manager or employee of a limited liability partnership (called in this section the contravening person) —

- (a) with the consent or connivance of the partnership or limited liability partnership; and
- (b) for the benefit of the partnership or limited liability partnership,

the partnership or limited liability partnership shall be guilty of that offence as if it had committed the contravention, and every partner of that partnership, or the limited liability partnership (as the case may be) shall be liable to be proceeded against and punished accordingly.

[2/2009]

(2) No proceedings shall be instituted against any partner of the partnership or the limited liability partnership under subsection (1) after —

- (a) a court has made an order against the partner or limited liability partnership for the payment of a civil penalty under subsection (3); or
- (b) the partner or limited liability partnership has entered into an agreement with the Authority to pay, with or without admission of liability, a civil penalty under section 232(5) (as that provision is applied to an action under subsection (3) by subsection (6)),

in respect of the same contravention.

[2/2009]

(3) Where it appears to the Authority that a partnership or a limited liability partnership is liable to be punished under subsection (1) for a contravention committed by a contravening person, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the partnership or limited liability partnership to seek an

order for a civil penalty in respect of that contravention as if the partnership or limited liability partnership had committed the contravention, whether or not such action is brought against the contravening person.

[2/2009]

(4) If the court in subsection (3) is satisfied on a balance of probabilities that the partnership or limited liability partnership is liable to be punished under subsection (1) for a contravention of any provision of this Part, the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not less than \$50,000 but not exceeding the greater of the following:

(a) 3 times —

- (i) the amount of the profit that the partnership or limited liability partnership gained as a result of the contravention by the contravening person; or
- (ii) the amount of the loss that the partnership or limited liability partnership avoided as a result of the contravention by the contravening person;

(b) \$2 million.

[4/2017]

(5) [Deleted by Act 4 of 2017]

(6) Sections 232(4) to (7) and 233 apply in relation to an action brought against a partnership or limited liability partnership under subsection (3) as they apply in relation to an action under section 232.

[2/2009]

(7) Any defence that would be available to —

- (a) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or
- (b) the partnership or limited liability partnership if it were prosecuted under subsection (1) in respect of that contravention,

is also available to the partnership or limited liability partnership in an action under subsection (3) in respect of that contravention.

[2/2009]

(8) The means by which consent or connivance of the partnership or limited liability partnership under subsection (1) or (3) may be established include proving that —

- (a) the executive partners of the partnership or limited liability partnership intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention;
- (b) a high managerial agent of the partnership or limited liability partnership intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the contravention; or
- (c) a corporate culture existed within the partnership or limited liability partnership that directed or encouraged non-compliance with the relevant provision.

[2/2009]

(9) In this section —

“corporate culture” means an attitude, policy, rule, course of conduct or practice existing within the partnership or limited liability partnership generally or in the part of the partnership or limited liability partnership in which the relevant activity takes place;

“executive partners” means the partners exercising the executive authority of the partnership or limited liability partnership;

“high managerial agent” means a partner, manager or employee of the partnership or limited liability partnership with duties of such responsibility that his or her conduct may fairly be assumed to represent the partnership or limited liability partnership’s policy.

[2/2009]

### **Civil penalty when partnership or limited liability partnership fails to prevent or detect contravention by partner, etc.**

**236F.**—(1) A partnership or limited liability partnership which fails to prevent or detect a contravention of any provision in this Part committed by a partner or employee of the partnership or a partner,



manager or employee of the limited liability partnership, as the case may be (called in this section the contravening person), which contravention is —

- (a) committed for the benefit of the partnership or limited liability partnership; and
- (b) attributable to the negligence of the partnership or limited liability partnership,

commits a contravention and shall be liable to an order for a civil penalty under this section.

[2/2009]

(2) Where it appears to the Authority that a partnership or limited liability partnership has committed a contravention under subsection (1), the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the partnership or limited liability partnership to seek an order for a civil penalty.

[2/2009]

(3) If the court is satisfied on a balance of probabilities that the partnership or limited liability partnership has committed a contravention under subsection (1), the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not less than \$50,000 but not exceeding the greater of the following:

- (a) 3 times —
  - (i) the amount of the profit that the partnership or limited liability partnership gained as a result of the contravention by the contravening person; or
  - (ii) the amount of the loss that the partnership or limited liability partnership avoided as a result of the contravention by the contravening person;
- (b) \$2 million.

[4/2017]

(4) [*Deleted by Act 4 of 2017*]

(5) Sections 232(4) to (7) and 233 apply in relation to an action brought against a partnership or limited liability partnership under subsection (2) as they apply in relation to an action under section 232. [2/2009]

(6) Any defence that would be available to the contravening person if the contravening person were prosecuted for the contravening person's contravention is also available to the partnership or limited liability partnership in an action under subsection (2) in respect of its failure to prevent or detect that contravention. [2/2009]

(7) For the purposes of subsection (1), in determining whether a contravention is attributable to the negligence of a partnership or limited liability partnership, the court is to take into account the following matters:

- (a) whether the partnership or limited liability partnership has established adequate policies and procedures for the purposes of preventing and detecting market misconduct;
- (b) whether the partnership or limited liability partnership has consistently enforced compliance with its policies and procedures referred to in paragraph (a);
- (c) such other factors as the court may consider relevant. [2/2009]

**Civil liability of partnership or limited liability partnership for contravention by partner, etc.**

**236G.**—(1) A defendant partnership which has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by the contravening person referred to in section 236E(1) or 236F(1) is, whether or not the partners of the partnership or the limited liability partnership had been convicted or the partnership or limited liability partnership had a civil penalty imposed on it, liable to pay compensation to any person (called in this section the claimant) who —

- (a) had been dealing in capital markets products of the same description contemporaneously with the contravention by the contravening person; and

- (b) had suffered loss by reason of the difference between —
- (i) the price at which the capital markets products were dealt in contemporaneously with the contravention by the contravening person; and
  - (ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —
    - (A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) (as the case may be) had been generally available; or
    - (B) in any other case, the contravention by the contravening person had not occurred.

*[2/2009; 34/2012; 4/2017]*

(2) The amount of compensation that the defendant partnership is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

- (a) by the contravening person under an order of court or an agreement to pay; or
- (b) under an order for disgorgement under section 236L,

to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

*[2/2009]*

(3) Any defence that would be available to —

- (a) the contravening person if the contravening person were prosecuted for the contravening person's contravention; or
- (b) the defendant partnership if it were prosecuted under section 236E(1) or had an action brought against it under section 236F(2),

is also available to the defendant partnership in an action under this section in respect of that contravention.

*[2/2009]*

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

[2/2009; 4/2017]

(5) In determining whether the dealing took place contemporaneously with the contravention by the contravening person, the court is to take into account the matters set out in section 234(5).

[2/2009; 4/2017]

(6) In this section, “maximum recoverable amount” means —

- (a) the amount of profit that the defendant partnership gained;  
or
- (b) the amount of the loss that it avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant partnership had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[2/2009]

*Subdivision (3) — Officers, partners, etc., of entities*

**Civil penalty against officer of corporation, etc.**

**236H.**—(1) Where it appears to the Authority that a corporation, partnership, limited liability partnership or unincorporated association (called in this section the contravening person) has contravened any provision in this Part —

- (a) with the consent or connivance of a person (called in this section the defendant) who is an officer or (where its affairs are managed by its members) a member of the corporation, a partner of the partnership, a partner or manager of the limited liability partnership, or an officer of the unincorporated association (other than a partnership) or a member of its governing body, as the case may be; or
- (b) as a result of any neglect on the part of the defendant,

the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the defendant to seek an order for a civil

penalty in respect of that contravention as if the defendant had committed the contravention, whether or not such action is brought against the contravening person.

[2/2009]

(2) If the court is satisfied on a balance of probabilities that the contravening person has contravened a provision in this Part with the consent or connivance of the defendant, or as a result of any neglect on the part of the defendant, the court may make an order against the defendant for the payment of a civil penalty of a sum not less than \$50,000 but not exceeding the greater of the following:

(a) 3 times —

- (i) the amount of the profit that the defendant gained as a result of the contravention by the contravening person; or
- (ii) the amount of the loss that the defendant avoided as a result of the contravention by the contravening person;

(b) \$2 million.

[4/2017]

(3) [*Deleted by Act 4 of 2017*]

(4) Sections 232(4) to (7) and 233 apply in relation to an action brought against a defendant under subsection (1) as they apply in relation to an action under section 232.

[2/2009]

(5) Any defence that would be available to —

- (a) the contravening person if it were prosecuted for its contravention; or
- (b) the defendant if he or she were prosecuted under section 331 in respect of that contravention,

is also available to the defendant in an action under subsection (1) in respect of that contravention.

[2/2009]

**Civil liability of officer of corporation, etc.**

**236I.**—(1) A defendant who has gained a profit or avoided a loss as a result of the contravention of a provision in this Part by a contravening person referred to in section 236H(1) is, whether or not the defendant had been convicted under section 331 or had a civil penalty imposed on the defendant under section 236H, liable to pay compensation to any person (called in this section the claimant) who —

- (a) had been dealing in capital markets products of the same description contemporaneously with the contravention by the contravening person; and
- (b) had suffered loss by reason of the difference between —
  - (i) the price at which the capital markets products were dealt in contemporaneously with the contravention by the contravening person; and
  - (ii) the price at which the capital markets products would have been likely to have been so dealt in at the time of the contemporaneous dealing if —
    - (A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1) (as the case may be) had been generally available; or
    - (B) in any other case, the contravention by the contravening person had not occurred.

*[2/2009; 34/2012; 4/2017]*

(2) The amount of compensation that the defendant is liable to pay to the claimant is the amount of the loss suffered by the claimant, after deducting any amount of compensation paid or payable —

- (a) by the contravening person under an order of court or an agreement to pay; or

(b) under an order for disgorgement under section 236L, to the same claimant in respect of the same contravention, up to the maximum recoverable amount.

[2/2009]

(3) Any defence that would be available to —

(a) the contravening person if it were prosecuted for its contravention; or

(b) the defendant if he or she were prosecuted under section 331 in respect of that contravention,

is also available to the defendant in an action under this section in respect of that contravention.

[2/2009]

(4) An action under this section must not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

[2/2009; 4/2017]

(5) In determining whether a dealing in capital markets products took place contemporaneously with the contravention by the contravening person, the court is to take into account the matters referred to in section 234(5)(a) to (e).

[2/2009; 4/2017]

(6) In this section, “maximum recoverable amount” means —

(a) the amount of the profit that the defendant gained; or

(b) the amount of the loss that the defendant avoided,

as a result of the contravention by the contravening person, after deducting all amounts of compensation that the defendant had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

[2/2009]

#### *Subdivision (4) — General*

### **Actions not to commence or stayed in certain situations**

**236J.**—(1) Except with the leave of court, no action may be brought against —

- (a) a defendant corporation under section 236B, 236C or 236D;
- (b) a defendant partnership (including, in the case of a partnership, any of the partners) under section 236E, 236F or 236G; or
- (c) a defendant under section 236H or 236I,

which relates to a contravention of a provision in this Part (called in this section the primary contravention) by a contravening person referred to in section 236B(1) or 236C(1) (in relation to the defendant corporation), 236E(1) or 236F(1) (in relation to the defendant partnership) or 236H(1) (in relation to the defendant), as the case may be, after the commencement of —

- (d) criminal proceedings in respect of the primary contravention against the contravening person; or
- (e) an action under section 232 in respect of the primary contravention against the contravening person,

and any such action in paragraph (a), (b) or (c) pending on the date of commencement of the proceedings or action in paragraph (d) or (e) must be stayed, and may not thereafter be continued except with the leave of court.

[2/2009]

(2) Leave under subsection (1) may not be granted if —

- (a) in the criminal proceedings referred to in subsection (1)(d), the contravening person has been acquitted of the primary contravention; or
- (b) in the action under section 232 referred to in subsection (1)(e), the court is not satisfied that the contravening person has committed the primary contravention.

[2/2009]

(3) Except with the leave of court, no action under section 236D, 236G or 236I may be brought against the defendant corporation, defendant partnership or defendant in respect of a primary contravention after the commencement of —



- (a) criminal proceedings against the defendant corporation under section 236B(1), the defendant partnership (including, in the case of a partnership, any of the partners) under section 236E(1) or the defendant under section 331 in respect of the same contravention;
- (b) an action against the defendant corporation under section 236B(3), the defendant partnership under section 236E(3) or the defendant under section 236H in respect of the same contravention; or
- (c) an action against the defendant corporation under section 236C(2) or the defendant partnership under section 236F(2) in respect of the failure to prevent or detect that contravention,

and any such action under section 236D, 236G or 236I (as the case may be) pending on the date of commencement of the proceedings or action in paragraph (a), (b) or (c) must be stayed, and may not thereafter be continued except with the leave of court.

[2/2009]

(4) Leave under subsection (3) may not be granted if a date has been fixed by a court under section 236K for the filing of claims, and in that event the claimant to the proposed action or the action that has been stayed (as the case may be) must comply with such directions relating to the filing and proof of the claimant's claim under section 236K as that court may issue in the claimant's case.

[2/2009]

### **Civil liability in event of conviction or civil penalty**

**236K.**—(1) Despite section 236D, 236G or 236I, where a defendant corporation, defendant partnership (including, in the case of a partnership, any of the partners) or defendant —

- (a) has been convicted of an offence under this Division; or

- (b) has had an order for the payment of civil penalty made against it, him or her under this Division, other than by way of a default judgment or a consent order made with or without admission of contravention,

and has gained a profit or avoided a loss as a result of the contravention by the contravening person referred to in section 236B(1), 236C(1), 236E(1), 236F(1) or 236H(1) (as the case may be) the court which convicted or made the order for a civil penalty against the defendant corporation, defendant partnership (or any of the partners thereof) or defendant may, after the conviction or the order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims against the defendant corporation, defendant partnership or defendant (as the case may be) for compensation in respect of that contravention.

[2/2009]

(2) Section 236(2) to (5) applies, with the necessary modifications, to an action under subsection (1), and in such application —

- (a) any reference to the contravening person is to be read as the defendant corporation, the defendant partnership or the defendant in subsection (1); and
- (b) the reference to an action under section 234 is to be read as an action under section 236D (in relation to the defendant corporation), 236G (in relation to the defendant partnership) or 236I (in relation to the defendant), as the case may be.

[2/2009]

(3) In this section, “claimant” means any person who would qualify as a claimant to bring an action against the defendant corporation, defendant partnership or defendant under section 236D, 236G or 236I, as the case may be.

[2/2009]

### **Order for disgorgement against third party**

**236L.**—(1) Without affecting any action under section 234, 236, 236D, 236G, 236I or 236K, where —

- (a) a person has been convicted by a court of an offence in respect of a contravention of any provision in this Part;
- (b) a person has had an order for the payment of a civil penalty made against the person under section 232 or any of the provisions in this Division by a court, other than by way of a default judgment or a consent order made with or without admission of contravention, in respect of a contravention of any provision in this Part; or
- (c) in an action commenced under this section, a court is satisfied on a balance of probabilities that a contravention by a person of any provision in this Part has occurred,

the court may, on the application of the Authority or any claimant, make an order against any other person (called in this section a third party) who has received the whole or any part of the benefit of that contravention for disgorgement of that benefit, being benefit derived from trades carried out for the third party by the person referred to in paragraph (a), (b) or (c).

[2/2009]

(2) The court must issue a notice to a third party against whom an application for an order for disgorgement under subsection (1) is made, giving the third party an opportunity to show cause, within such time as may be specified in the notice, why the order should not be made.

[2/2009]

(3) An application for an order for disgorgement under subsection (1) must not be commenced after the expiration of 6 years from the date on which the contravention referred to in that subsection was committed.

[2/2009]

(4) The court is not to make an order for disgorgement against a third party, or is not to order disgorgement of the entire benefit derived by the third party, if the court is satisfied, on a balance of probabilities, that —

- (a) the third party acquired the benefit without knowing, and in circumstances such as not to arouse a reasonable

suspicion, that the benefit was derived from the contravention referred to in subsection (1); and

- (b) the third party has so altered the third party's position in reliance on the third party having an indefeasible interest in the benefit that, in the opinion of the court, it would be inequitable to make the order for disgorgement or to order disgorgement of the entire benefit derived by the third party, as the case may be.

[2/2009]

(5) Despite subsection (4), the court may make an order for disgorgement against a third party referred to in subsection (4) of a sum that is, in the opinion of the court, equitable.

[2/2009]

(6) The court may, after the order for disgorgement has been made final, fix a date, not earlier than 6 months from the date the order for disgorgement has been made final, on or before which all claimants have to file and prove their claims for compensation in respect of the contravention referred to in subsection (1).

[2/2009]

(7) The court may, after the expiry of the date fixed under subsection (6), order that each claimant who has filed and proven the claimant's claim for compensation be paid out of the sum under the final order for disgorgement, an amount —

- (a) equal to the amount of loss suffered by the claimant, after deducting any other compensation paid or payable to the same claimant under an order of court or an agreement to pay in respect of the same contravention; or
- (b) equal to the pro-rated portion of the sum under the final order for disgorgement, calculated according to the relationship which the amount referred to in paragraph (a) bears to all amounts proved to the court,

whichever is the lesser.

[2/2009]

(8) Any sum remaining under the order for disgorgement must be paid into the Consolidated Fund and is to be treated as a debt due to

the Government for the purposes of section 10 of the Government Proceedings Act 1956.

[2/2009; 4/2017]

(9) If the third party fails to pay the sums under the order for disgorgement within the time specified in the court order under subsection (7) —

- (a) each claimant may recover the sum due to the claimant under the order for disgorgement as though it were a judgment debt due to the claimant; and
- (b) the remaining sum under the order for disgorgement may be recovered by the Authority as though it were a judgment debt due to the Authority and paid into the Consolidated Fund.

[2/2009]

(10) After the expiry of the date fixed under subsection (6), no person may make any subsequent application under this section for an order for disgorgement against the third party in respect of the same contravention.

[2/2009]

(11) For the purposes of this section, an order for disgorgement is made final if —

- (a) the order is not set aside on appeal or revision or is varied only as to the sum to be disgorged;
- (b) the order is not subject to further appeal;
- (c) no notice of appeal against the order is lodged within the time prescribed by Rules of Court; or
- (d) any appeal against the order is withdrawn.

[2/2009]

(12) In this section —

“benefit”, in relation to a contravention of any provision in this Part, means a profit gained or loss avoided as a result of that contravention;

“claimant”, in relation to a contravention of any provision in this Part, means any person who would qualify as a claimant under section 234 in respect of that contravention.

[2/2009]

### *Division 6 — Miscellaneous*

[2/2009]

## **Jurisdiction of District Court**

**237.** A District Court has jurisdiction to hear and determine any action or application under Division 4 or 5 regardless of the monetary amount.

[34/2012]

## **Rules of Court**

**238.**—(1) Rules of Court may be made —

- (a) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under Divisions 4 and 5; and
- (b) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

[2/2009; 34/2012]

(2) Without limiting subsection (1), Rules of Court may, in relation to proceedings under sections 236, 236K and 236L —

- (a) provide for the advertisement of a notice for the filing and proof of claims under those sections;
- (b) prescribe the procedure for the filing, proof and hearing of those claims; and
- (c) provide for the payment of the costs and fees of an action that has been stayed under section 235(2) or 236J.

[2/2009]

## PART 13

## OFFERS OF INVESTMENTS

*Division 1 — Securities and Securities-based Derivatives Contracts*

[4/2017]

*Subdivision (1) — Interpretation***Preliminary provisions****239.**—(1) In this Division —

“borrowing entity” means an entity that is or will be under a liability (whether or not such liability is present or future) to repay any money received by it in response to an invitation to subscribe for or purchase debentures of the entity;

“control”, in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

(a) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and

(b) any practice or pattern of behaviour of the person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

“dealing in capital markets products”, in respect of capital markets products that are securities or securities-based derivatives contracts, means (whether as principal or agent) —

(a) making or offering to make with any person; or

(b) inducing or attempting to induce any person to enter into or to offer to enter into,

any agreement for or with a view to acquiring, disposing of, subscribing for, entering into, effecting, arranging or underwriting any securities or securities-based derivatives contracts;

“debenture issuance programme” means any scheme or arrangement by an entity for the issue of debentures or units of debentures where only part of the maximum amount or aggregate number of debentures or units of debentures under the programme is offered initially and a further tranche or tranches may be offered subsequently;

“expert” has the meaning given by section 4(1) of the Companies Act 1967;

“guarantor entity”, in relation to a borrowing entity, means an entity that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing entity in response to an invitation to subscribe for or purchase debentures of the borrowing entity;

“immediate family”, in relation to an individual, means the individual’s spouse, son, adopted son, stepson, daughter, adopted daughter, stepdaughter, father, stepfather, mother, stepmother, brother, stepbrother, sister or stepsister;

“issuer” means —

(a) in relation to an offer of securities or securities-based derivatives contracts (other than units or derivatives of units in a business trust), the entity that issues or will be issuing the securities or securities-based derivatives contracts being offered;

(b) in relation to an offer of units in a business trust, the trustee-manager of the business trust in its capacity as the trustee that issues or will be issuing the units; and

(c) in relation to an offer of derivatives of units in a business trust, the trustee-manager of the business



trust in its capacity as the trustee, or any other entity that issues or will be issuing the derivatives of units;

“minimum subscription”, in relation to any securities or securities-based derivatives contracts offered for subscription, means the amount stated in the prospectus relating to the offer as the minimum amount which must be raised by the issue of the securities or securities-based derivatives contracts so offered, failing which no securities or securities-based derivatives contracts will be allotted or issued;

“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, securities or securities-based derivatives contracts to be issued or sold and which contains the information required to be included in a prospectus under section 243, except for such information as the Authority may prescribe;

“product highlights sheet” means a product highlights sheet referred to in section 240AA(1);

“profile statement” means a profile statement referred to in section 240(4);

“promoter”, in relation to a prospectus issued by or in connection with an entity or a business trust, means a promoter of the entity or business trust (as the case may be) who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of the person acting in a professional capacity;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of securities or securities-based derivatives contracts, and includes any document deemed to be a prospectus under section 257, but does not include —

(a) a profile statement;

- (b) any material, advertisement or publication which is authorised by section 251 (other than subsection (5));  
or
- (c) a product highlights sheet;

“recognised securities exchange” means a corporation which has been declared by the Authority, by order in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;

“related party” means —

- (a) in relation to an entity —
  - (i) a director or an equivalent person of the entity;
  - (ii) the chief executive officer or equivalent person of the entity;
  - (iii) a person who controls the entity;
  - (iv) a related corporation;
  - (v) any other entity controlled by it;
  - (vi) any other entity controlled by the person referred to in sub-paragraph (iii); and
  - (vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and
- (b) in relation to an individual —
  - (i) his or her immediate family;
  - (ii) a trustee of any trust of which the individual or any member of the individual’s immediate family is —
    - (A) a beneficiary; or
    - (B) where the trust is a discretionary trust, a discretionary object,  
when the trustee acts in that capacity; and
  - (iii) any corporation in which the individual and his or her immediate family (whether directly or

indirectly) have interests in voting shares of an aggregate of not less than 30% of the total votes attached to all voting shares;

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 241(1), as the case may be;

“statutory meeting” has the meaning given by section 4(1) of the Companies Act 1967;

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 241(1), as the case may be;

“trust deed” has the same meaning as “deed” in section 2 of the Business Trusts Act 2004;

“trust property” has the meaning given by section 2 of the Business Trusts Act 2004;

“underlying entity”, in relation to an offer of units of shares or debentures, means the entity the shares or debentures of which are the subject of the offer;

“unit”, in relation to a share or debenture, means any right or interest, whether legal or equitable, in the share or debenture, by whatever name called, and includes any option to acquire any such right or interest in the share or debenture.

*[2/2009; 34/2012; 4/2017]*

(2) For the purposes of this Division, a statement is deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) For the purposes of this Division —

(a) any invitation to a person to deposit money with or to lend money to an entity is deemed to be an offer of debentures of the entity; and

(b) any document that is issued or intended or required to be issued by an entity acknowledging or evidencing or constituting an acknowledgment of the indebtedness of

the entity in respect of any money that is or may be deposited with or lent to the entity in response to such an invitation is deemed to be a debenture.

(3A) Despite subsection (3) —

- (a) any invitation to a person by a prescribed entity to make a deposit with the prescribed entity is not an offer of debentures; and
- (b) the following documents issued or intended or required to be issued by a prescribed entity are not debentures:
  - (i) any certificate of deposit;
  - (ii) any other document acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the prescribed entity in respect of any deposit that is or may be made with the prescribed entity.

(4) In subsections (3A) and (5) —

“deposit” has the meaning given by section 4B(4) of the Banking Act 1970;

“prescribed entity” means —

- (a) any bank licensed under the Banking Act 1970; or
- (b) any entity or any entity of a class which has been declared by the Authority, by order in the *Gazette*, to be a prescribed entity for the purposes of this subsection.

(4A) For the purposes of this Division, references to a debenture includes a debenture, or a unit of debenture, issued by a trustee of a trust on behalf of the trust.

[4/2017]

(5) The Authority may, by written notice —

- (a) impose such conditions or restrictions on a prescribed entity as it thinks fit; and

- (b) at any time vary or revoke any condition or restriction so imposed,

and the prescribed entity must comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

(5A) Any person who contravenes any condition or restriction imposed under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(6) For the purposes of this Division, a person makes an offer of any securities or securities-based derivatives contracts if, and only if, as principal —

- (a) the person makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those securities or securities-based derivatives contracts by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale; or
- (b) the person invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those securities or securities-based derivatives contracts by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale.

[4/2017]

(7) In subsection (6), “sale” includes any disposal for valuable consideration.

(8) This Division applies only in relation to offers of securities or securities-based derivatives contracts made on or after 1 July 2002.

[4/2017]

**Authority may disapply this Division to certain offers**

**239A.**—(1) Despite any provision to the contrary in this Division, where —

- (a) an offer of securities or securities-based derivatives contracts is one to which (but for this section) both this Division and Division 2 apply; and
- (b) the Authority has by order in the *Gazette* declared that this Division does not apply to that offer or a class of offers to which that offer belongs,

then this Division does not apply to that offer.

[4/2017]

(2) This Division does not apply to an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, where —

- (a) the business trust is also a collective investment scheme that has been authorised under section 286 or recognised under section 287; or
- (b) the business trust is also a collective investment scheme and the offer is made in reliance on an exemption under Subdivision (4) of Division 2.

[4/2017]

**Modification of provisions to certain offers**

**239B.** The Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of securities or securities-based derivatives contracts as may be prescribed, and the provisions of this Division apply to such offer subject to such modifications or adaptations.

[2/2009; 4/2017]

*Subdivision (1A) — Offers of units in and recognition of business trusts*

**Requirement for registration or recognition**

**239C.**—(1) A person must not make an offer of units or derivatives of units in a business trust unless the business trust is a registered business trust or a recognised business trust.

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

**Power of Authority to recognise business trusts constituted outside Singapore**

**239D.**—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2), recognise a business trust constituted outside Singapore.

[4/2017]

(2) The Authority may recognise a business trust under subsection (1) if and only if the Authority is satisfied that —

- (a) the laws and practices of the jurisdiction under which the business trust is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them under the Business Trusts Act 2004 in the case of registered business trusts;
- (b) the business trust satisfies such criteria as may be prescribed by regulations made under section 341; and
- (c) the person making the offer of, or the issuer of, units or derivatives of units in the business trust, or the trustee-manager of the business trust, satisfies such

criteria as may be prescribed by regulations made under section 341.

[4/2017]

(3) Without affecting subsection (2), in considering whether to recognise a business trust under subsection (1), the Authority may have regard to such other factors as may be prescribed.

[4/2017]

(4) Without affecting subsection (2), the Authority may refuse to recognise any business trust where it appears to the Authority that it is not in the public interest to do so.

[4/2017]

(5) The Authority must not refuse to recognise a business trust under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the business trust on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or the business trust itself is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of —
  - (i) any property of the person making the offer (being an entity) or the issuer;
  - (ii) any property of the trustee-manager of the business trust; or
  - (iii) the trust property of the business trust.

[4/2017]

(6) Any person making an application under subsection (1) may, within 30 days after the person is notified that the Authority has



refused to recognise that business trust constituted outside Singapore, appeal to the Minister whose decision is final.

[4/2017]

(7) An application made under subsection (1) must be accompanied by such information or record as the Authority may require.

[4/2017]

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any business trust that is recognised under subsection (1).

[4/2017]

(9) While a business trust remains a recognised business trust, each of the following persons must ensure that the criteria prescribed by regulations made under section 341 in accordance with subsection (2)(b) and (c) which are applicable to the person continue to be satisfied:

- (a) a person making an offer of units or derivatives of units in the trust;
- (b) an issuer of units or derivatives of units in the trust;
- (c) the trustee-manager of the trust.

[4/2017]

(10) The trustee-manager of a recognised business trust must provide such information or record regarding the business trust as the Authority may, at any time, require for the proper administration of this Act.

[4/2017]

(11) Any person who contravenes subsection (9) or (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Power of Authority to impose conditions or restrictions**

**239E.**—(1) The Authority may recognise a business trust under section 239D(1) subject to such conditions or restrictions as it thinks fit to impose on any of the following persons for the purpose of protecting investors of the business trust:

- (a) the trustee-manager of the trust;
  - (b) a person making an offer of units or derivatives of units in the trust;
  - (c) an issuer of units or derivatives of units in the trust.
- [4/2017]*
- (2) Each of the persons mentioned in subsection (1) must comply with the conditions or restrictions applicable to the person.
- [4/2017]*
- (3) The Authority may, at any time, by written notice to any of the persons mentioned in subsection (1), vary any condition or restriction or impose any further condition or restriction as the Authority thinks fit.
- [4/2017]*
- (4) Any person who contravenes any condition or restriction applicable to the person under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.
- [4/2017]*

### **Revocation, suspension or withdrawal of recognition**

**239F.**—(1) The Authority may revoke the recognition of a recognised business trust granted under section 239D(1) if —

- (a) the application for recognition, or any related information or record submitted to the Authority, whether at the same time as or subsequent to the application, was false or misleading in a material particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the recognition;
- (b) the Authority is of the opinion that the continued recognition of the business trust is or will be against the public interest;

- (c) the Authority is of the opinion that the continued recognition of the business trust is or will be prejudicial to its unitholders or potential unitholders; or
- (d) there has been a contravention of section 239D(9) or (10) or a condition or restriction mentioned in section 239E(1) or (3).

[4/2017]

(2) Where the Authority revokes the recognition of a recognised business trust under subsection (1), the Authority may issue any directions it thinks fit to any of the following persons:

- (a) a person making an offer of units or derivatives of units in the business trust;
- (b) the issuer of units or derivatives of units in the business trust;
- (c) the trustee-manager of the business trust,

and the person must comply with such directions.

[4/2017]

(3) The directions mentioned in subsection (2) may include a direction that the person provides the holders of the units or derivatives of units with an option to redeem or sell back to the person their units or derivatives of units (as the case may be) on such terms as the Authority may approve.

[4/2017]

(4) In determining whether to issue a direction under subsection (2), the Authority must consider —

- (a) whether the trustee-manager of the business trust is able to liquidate the property of the business trust without material adverse financial effect to the unitholders and for this purpose, the factors which the Authority may take into account include —
  - (i) the liquidity of the property of the business trust;
  - (ii) the penalties (if any) payable for liquidating the property; and

- (iii) where the units of the business trust are also listed for quotation or quoted on an overseas exchange, the potential impact which the liquidation may have on unitholders in the country or territory where the units are listed; and
- (b) where the units or derivatives of units in the business trust are listed for quotation on the official list of an approved exchange, whether the holders of the units or derivatives of units are afforded an opportunity to liquidate, sell or redeem their units or derivatives of units on reasonable terms in accordance with the requirements of the listing rules of the approved exchange.

[4/2017]

(5) A person who, without reasonable excuse, contravenes any of the directions issued by the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(6) Despite subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the recognition of a recognised business trust, suspend the recognition of that recognised business trust for a specific period, and may at any time remove such suspension.

[4/2017]

(7) Where the Authority revokes the recognition of a recognised business trust under subsection (1) or suspends the recognition of a recognised business trust under subsection (6), it must notify the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 239D(1).

[4/2017]

(8) Subject to subsection (9), the Authority may, upon a written application made to it by the trustee-manager of the business trust or the person who made the application to the Authority for recognition of a business trust under section 239D(1), in such form and manner as

may be prescribed, withdraw the recognition of that recognised business trust.

[4/2017]

(9) The Authority may refuse to withdraw the recognition of a recognised business trust under subsection (8) where the Authority is of the opinion that —

- (a) there is any matter concerning the recognised business trust which should be investigated before the recognition is withdrawn; or
- (b) the withdrawal of the recognition would not be in the public interest.

[4/2017]

(10) The Authority must not —

- (a) revoke the recognition of a recognised business trust under subsection (1) without giving the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 239D(1), an opportunity to be heard;
- (b) impose a direction on a person mentioned in subsection (2) without giving that person an opportunity to be heard;
- (c) suspend the recognition of a recognised business trust under subsection (6) without giving the trustee-manager of the business trust and, where the Authority deems it necessary, the person who made the application to the Authority for recognition of the business trust under section 239D(1), an opportunity to be heard; or
- (d) refuse the withdrawal of the recognition of a recognised business trust under subsection (9) without giving the person mentioned in subsection (8) an opportunity to be heard.

[4/2017]

(11) Despite subsection (10), an opportunity to be heard need not be given for a revocation or suspension on the ground that the continued

recognition of the recognised business trust is against the public interest on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the issuer, the trustee-manager of the recognised business trust or the recognised business trust itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of —
  - (i) any property of the person making the offer (being an entity) or the issuer;
  - (ii) any property of the trustee-manager of the recognised business trust; or
  - (iii) the trust property of the recognised business trust.

[4/2017]

(12) The following persons may appeal to the Minister within 30 days after being notified of the following decisions of the Authority:

- (a) where the Authority revokes the recognition of a recognised business trust under subsection (1), or suspends the recognition of a recognised business trust under subsection (6), the person or persons mentioned in subsection (7);
- (b) where the Authority has imposed a direction on a person under subsection (2), the person mentioned in subsection (2);
- (c) where the Authority refuses to withdraw the recognition of a recognised business trust under subsection (9), the person mentioned in subsection (8).

[4/2017]

(13) A decision of the Minister in an appeal under subsection (12) is final.

[4/2017]

(14) Where the Authority revokes a recognition under subsection (1), suspends a recognition under subsection (6) or withdraws a recognition under subsection (8), it may —

- (a) impose such conditions on the revocation, suspension or withdrawal (as the case may be) as it considers appropriate; and
- (b) publish notice of the revocation, suspension or withdrawal (as the case may be), and the reason for the revocation, suspension or withdrawal (as the case may be), in such manner as it considers appropriate.

[4/2017]

#### *Subdivision (2) — Prospectus requirements*

### **Requirement for prospectus and profile statement, where relevant**

**240.**—(1) A person must not make an offer of securities or securities-based derivatives contracts unless the offer —

- (a) is made in or accompanied by a prospectus in respect of the offer —
  - (i) that is prepared in accordance with section 243;
  - (ii) a copy of which, being one that has been signed in accordance with subsection (4A), is lodged with the Authority; and
  - (iii) that is registered by the Authority; and
- (b) complies with such requirements as the Authority may prescribe.

[4/2017]

(2) A person who lodges a preliminary document with the Authority is deemed to have lodged a prospectus with the Authority.

(3) A preliminary document referred to in subsection (2) must contain all information to be included in a prospectus other than such information as the Authority may prescribe.

(4) Despite subsection (1), an offer of securities or securities-based derivatives contracts may be made in or accompanied by an extract from, or an abridged version of, a prospectus (called in this section a profile statement), instead of a prospectus, if —

- (a) a prospectus in respect of such offer is prepared in accordance with section 243, and the profile statement is prepared in accordance with section 246;
- (b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (4A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;
- (c) the prospectus and profile statement are registered by the Authority;
- (d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and
- (e) the offer complies with such requirements as the Authority may prescribe.

[4/2017]

(4A) The copy of a prospectus or profile statement lodged with the Authority must be signed —

- (a) where the person making the offer is the issuer —
  - (i) in a case where the issuer is not the government of a State — by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; or
  - (ii) in a case where the issuer is the government of a State — by an official of that government who is authorised to sign the prospectus on its behalf;



- (b) where the person making the offer is an individual and is not the issuer —
  - (i) in a case where the issuer is not the government of a State —
    - (A) by that person; and
    - (B) if the issuer is controlled by that person, one or more of his or her related parties, or that person and one or more of his or her related parties — by every director or equivalent person of the issuer and every person who is named therein as a proposed director or an equivalent person of the issuer; or
  - (ii) in a case where the issuer is the government of a State — by that person;
- (c) where the person making the offer is an entity (not being the government of a State) and is not the issuer —
  - (i) in a case where the issuer is not the government of a State —
    - (A) by every director or equivalent person of that entity; and
    - (B) if the issuer is controlled by that entity, one or more of its related parties, or that entity and one or more of its related parties — by every director or equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer; or
  - (ii) in a case where the issuer is the government of a State — by every director or equivalent person of that entity; and
- (d) where the person making the offer is the government of a State and is not the issuer —
  - (i) in a case where the issuer is not the government of another State —

(A) by an official of the government of the State who is authorised to sign the prospectus on its behalf; and

(B) if the issuer is controlled by that government, one or more of its related parties, or that government and one or more of its related parties — by every director or every equivalent person of the issuer, and every person who is named therein as a proposed director or an equivalent person of the issuer; or

(ii) in a case where the issuer is the government of another State — by an official of the government of the firstmentioned State who is authorised to sign the prospectus on its behalf.

(4B) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(a) by that director or equivalent person; or

(b) by a person who is authorised in writing by that director or equivalent person to sign on his or her behalf.

(4C) A requirement under subsection (4A) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(a) by that proposed director or equivalent person; or

(b) by a person who is authorised in writing by that proposed director or equivalent person to sign on his or her behalf.

(5) A person must not make any offer of securities or securities-based derivatives contracts in respect of an entity or a business trust that has not been formed or does not exist.

[4/2017]

(6) [*Deleted by Act 1 of 2005*]

(7) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

(8) The Authority may register a prospectus or a profile statement on any day within the period prescribed by the Authority from the date of lodgment thereof with the Authority, unless —

- (a) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (15);
- (b) the Authority gives to the person making the offer a notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —
  - (i) register the prospectus or profile statement; or
  - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (15);
- (c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, and the Authority grants an extension as it thinks fit, in which case the Authority may, at any time up to and including the date on which the extended period ends —
  - (i) register the prospectus or profile statement; or
  - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (15); or
- (d) the person making the offer gives a written notice to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority must not register the prospectus or profile statement.

[2/2009]

(8A) Where, after a notice of an opportunity to be heard has been given under subsection (8)(a), (b)(ii) or (c)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate, except that that date must not be earlier than such day from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe.

[2/2009]

(8B) For the purposes of subsections (8) and (8A), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.

[2/2009]

(9) Where a prospectus lodged with the Authority is a preliminary document, the Authority must not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (4A) and which contains the information required to be stipulated in the prospectus under section 243, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been lodged with the Authority.

(9A) A person making an offer of securities or securities-based derivatives contracts may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before, but not after, the registration of the prospectus or profile statement by the Authority.

[4/2017]

(10) Subject to subsection (11) —

- (a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged is deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged; and
- (b) where any amendment to a profile statement is lodged, the profile statement is deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged.

(11) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended is deemed, for the purposes of subsection (8), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

(11A) An amendment to a prospectus or profile statement that is lodged is treated as part of the original prospectus or profile statement.

(12) The Authority may, for public information, publish —

- (a) a prospectus or profile statement lodged with the Authority under this section; and
- (b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1),

and, for the purposes of this subsection, the person making the offer must provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation in such form or medium for publication as the Authority may require.

(13) The Authority must refuse to register a prospectus if —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included in it under section 243;
- (c) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (4A);
- (d) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;
- (e) any written consent of an expert to the issue of the prospectus required under section 249, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (ea) any written consent of an issue manager to the issue of the prospectus required under section 249A(1), or a copy

thereof which is verified as prescribed, is not lodged with the Authority;

- (*eb*) any written consent of an underwriter to the issue of the prospectus required under section 249A(2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or
  - (*f*) the Authority is of the opinion that it is not in the public interest to do so.
- (14) The Authority must refuse to register a profile statement if —
- (*a*) the Authority is of the opinion that the profile statement contains a false or misleading statement;
  - (*b*) there is an omission from the profile statement of information required by section 246 to be included in it or an inclusion in the profile statement of information prohibited by that section from being included in it;
  - (*c*) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (4A);
  - (*ca*) any written consent of an expert to the issue of the profile statement required under section 249, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
  - (*cb*) any written consent of an issue manager to the issue of the profile statement required under section 249A(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
  - (*cc*) any written consent of an underwriter to the issue of the profile statement required under section 249A(2), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
  - (*d*) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;
  - (*e*) the prospectus has not been registered by the Authority; or

- (f) the Authority is of the opinion that it is not in the public interest to do so.

(15) The Authority must not refuse to register a prospectus under subsection (13) or a profile statement under subsection (14) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or, where applicable, the underlying entity or the business trust is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or, where applicable, the underlying entity, or in relation to or in respect of the trust property of the business trust.

[4/2017]

(16) Any person making an offer may, within 30 days after the person is notified that the Authority has refused to register a prospectus or profile statement to which the person's offer relates under subsection (13) or (14), appeal to the Minister, whose decision is final.

(17) If —

- (a) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority;
- or

- (b) an application to subscribe for or purchase securities or securities-based derivatives contracts is accepted, or securities or securities-based derivatives contracts are allotted, issued or sold, before a prospectus and, where applicable, profile statement in respect of the securities or securities-based derivatives contracts has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

- (c) the issue, circulation or distribution of the prospectus or profile statement;
- (d) the acceptance of the application to subscribe for or purchase the securities or securities-based derivatives contracts; or
- (e) the allotment, issue or sale of the securities or securities-based derivatives contracts,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(18) This section is subject to section 240A.

(19) For the purposes of subsections (13)(a) and (14)(a), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(20) 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 \$50,000.

### **Requirement for product highlights sheet, where relevant**

**240AA.**—(1) A person must not make an offer of any relevant securities or securities-based derivatives contracts, being an offer that is made in or accompanied by a prospectus or profile statement that



complies with section 240, unless the prospectus or profile statement is accompanied by a product highlights sheet in respect of the offer —

- (a) that complies with such requirements as the Authority may prescribe by regulations made under section 341; and
- (b) a copy of which is lodged with the Authority.

[34/2012; 4/2017]

(2) A person must not publish or disseminate, whether in Singapore or elsewhere, any document relating to any offer or intended offer of any relevant securities or securities-based derivatives contracts, being an offer that is, or an intended offer that will be, made in or accompanied by a prospectus or profile statement that complies with section 240, if the document resembles or may otherwise be confused with a product highlights sheet, unless the person is required to do so —

- (a) under any written law or rule of law, or by any court, in Singapore;
- (b) under the laws and practices of, or by any court in, any foreign jurisdiction; or
- (c) by any listing rules or other requirements of any approved exchange or overseas exchange.

[34/2012; 4/2017]

(3) The Authority may, for public information, publish —

- (a) a product highlights sheet lodged with the Authority under this section; and
- (b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1).

[34/2012]

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) In this section —

“asset-backed securities” has the meaning given by section 262(3);

“relevant securities or securities-based derivatives contracts” means —

- (a) asset-backed securities;
- (b) structured notes; or
- (c) such other securities or securities-based derivatives contracts as the Authority may prescribe by regulations made under section 341;

“single purpose vehicle” means an entity that is established solely in order to, or a trust that is established solely in order for its trustee to, do either or both of the following:

- (a) act as counterparty to arrangements which involve the use of derivatives to create exposure to assets from which payments to holders of any structured notes are or will be primarily derived;
- (b) issue any structured notes;

“specified financial institution” means —

- (a) any bank licensed under the Banking Act 1970; or
- (b) any entity that is, or that belongs to a class of entities that is, specified by the Authority, by notification in the *Gazette*, to be an entity, or a class of entities, for the purposes of this definition;

“structured notes” means any type of debentures or units of debentures —

- (a) which is issued —
  - (i) in relation to —
    - (A) a synthetic securitisation transaction; or
    - (B) such other arrangement or transaction as the Authority may prescribe by regulations made under section 341; or

- (ii) by a specified financial institution; and
- (b) for which —
- (i) the principal sum or any interest is, or both are, payable;
  - (ii) such other sum or sums as the Authority may prescribe by regulations made under section 341, is or are payable;
  - (iii) one or more underlying assets, being securities or securities-based derivatives contracts, equity interests, commodities, currencies or such other assets as the Authority may prescribe by regulations made under section 341, are to be physically delivered; or
  - (iv) 2 or more of sub-paragraphs (i), (ii) and (iii) apply,

in accordance with a formula based on one or more of the following:

- (v) the performance of any type of securities or securities-based derivatives contracts, equity interest, commodity or index, or of a basket of 2 or more types of securities or securities-based derivatives contracts, equity interests, commodities or indices;
- (vi) the credit risk or performance of any entity or a basket of entities;
- (vii) the movement of interest rates or currency exchange rates;
- (viii) such other variables as the Authority may prescribe by regulations made under section 341;

“synthetic securitisation transaction” means an arrangement involving the use of derivatives to create or replicate

exposure to assets that are not transferred to, or are not a part of an asset pool held by, a single purpose vehicle.

[34/2012; 4/2017]

### **Exemption from requirement for product highlights sheet**

**240AB.**—(1) Despite section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons from all or any of the requirements in section 240AA, subject to such conditions or restrictions as the Authority may specify.

[4/2017]

(2) The Authority may, by written notice, exempt any person from all or any of the requirements in section 240AA, subject to such conditions or restrictions as the Authority may specify by written notice.

[4/2017]

(3) The Authority may at any time add to, vary or revoke any condition or restriction imposed under subsection (1) or (2).

[4/2017]

(4) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[4/2017]

(5) Any person who contravenes any condition or restriction imposed under subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

### **Debenture issuance programme**

**240A.**—(1) A prospectus for every offer of debentures or units of debentures that is part of a debenture issuance programme must comprise —

- (a) a base prospectus applicable to every offer under the debenture issuance programme; and
- (b) a pricing statement applicable to that particular offer.

(2) A profile statement for every offer of debentures or units of debentures that is part of a debenture issuance programme must comprise —

- (a) an extract from, or an abridged version of, a base prospectus referred to in subsection (1)(a) (called in this section a base profile statement); and
- (b) a pricing statement applicable to that particular offer.

(3) In respect of an offer referred to in subsection (1), the requirements of section 240(1)(a)(ii) and (iii) are satisfied if a copy of the base prospectus and a copy of the pricing statement, each of which is signed in accordance with section 240(4A), have been lodged with and registered by the Authority, either separately, whether on the same date or on different dates, or as a single document.

(4) In respect of an offer referred to in subsection (2), the requirements of section 240(4)(b) and (c) are satisfied if a copy of the base profile statement and a copy of the pricing statement, each of which is signed in accordance with section 240(4A), have been lodged with and registered by the Authority, either separately, whether on the same date or on different dates, or as a single document.

(5) To avoid doubt, where the base prospectus or base profile statement in relation to a debenture issuance programme has been lodged with and registered by the Authority, it is treated as having been lodged with and registered by the Authority in respect of every offer under that programme.

(6) For the purposes of the application of the provisions of this Subdivision to an offer referred to in subsection (1), a reference to a prospectus is, unless the context otherwise requires or the Authority has prescribed otherwise, to be read as a reference to both the base prospectus and the pricing statement.

(7) For the purposes of the application of the provisions of this Subdivision to an offer referred to in subsection (2), a reference to a profile statement is, unless the context otherwise requires or the

Authority has prescribed otherwise, to be read as a reference to both the base profile statement and the pricing statement.

(8) The Authority may, by regulations, prescribe how the provisions of this Subdivision apply to an offer referred to in subsection (1) or (2).

(9) To avoid doubt, a pricing statement may be registered by the Authority at any time after its lodgment with the Authority.

### **Lodging supplementary document or replacement document**

**241.**—(1) If, after a prospectus or profile statement is registered but before the close of the offer of securities or securities-based derivatives contracts, the person making that offer becomes aware of —

- (a) a false or misleading statement in the prospectus or profile statement;
- (b) an omission from the prospectus of any information that should have been included in it under section 243, or an omission from the profile statement of any information that should have been included in it under section 246, as the case may be; or
- (c) a new circumstance that —
  - (i) has arisen since the prospectus or profile statement was lodged with the Authority; and
  - (ii) would have been required by —
    - (A) section 243 to be included in the prospectus; or
    - (B) section 246 to be included in the profile statement,if it had arisen before the prospectus or the profile statement (as the case may be) was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (called in this

section a supplementary or replacement document, as the case may be), with the Authority.

[4/2017]

(1A) If, after a base prospectus or a base profile statement referred to in section 240A is registered but before the expiration of 24 months from the registration of the base prospectus by the Authority, the person making that offer intends to update any information or include any new information in the base prospectus or base profile statement, the person may lodge a supplementary or replacement document with the Authority, provided that no offer to which the base prospectus or base profile statement relates is subsisting at the time of the lodgment.

(1B) Subsections (7) to (16) do not apply to a supplementary or replacement document which is lodged under subsection (1A).

(1C) For the purposes of subsection (1A), an offer is not treated as subsisting if —

- (a) a pricing statement in respect of the offer of debentures or units of debentures has not been registered by the Authority under section 240A; or
- (b) a pricing statement in respect of the offer of debentures or units of debentures has been registered by the Authority under section 240A, and —
  - (i) the offer has closed with no application to subscribe for or purchase the debentures or units of debentures having been received or accepted; or
  - (ii) one or more applications to subscribe for or purchase the debentures or units of debentures have been received or accepted, and —
    - (A) in a case where the debentures or units of debentures are or will be listed for quotation on an approved exchange, trading in them has commenced; or
    - (B) in any other case, all of those debentures or units of debentures have been issued or sold.

[4/2017]

(2) At the beginning of a supplementary document, there must be —

- (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;
- (b) an identification of the prospectus or profile statement it supplements;
- (c) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and
- (d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.

(3) At the beginning of a replacement document, there must be —

- (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and
- (b) an identification of the prospectus or profile statement it replaces.

(4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

(5) The person making the offer must take reasonable steps —

- (a) to inform potential investors of the lodgment of any supplementary or replacement document under subsection (1) or (1A); and
- (b) to make available to them the supplementary document or replacement document.

(6) For the purposes of the application of this Division to events that occur after the lodgment of the supplementary document —

- (a) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer is taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and



- (b) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer is taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

(6A) [*Deleted by Act 1 of 2005*]

(6B) For the purposes of the application of this Division to events that occur after the lodgment of the replacement document —

- (a) where the replacement document is a replacement prospectus, the prospectus in relation to the offer is taken to be the replacement prospectus; and
- (b) where the replacement document is a replacement profile statement, the profile statement in relation to the offer is taken to be the replacement profile statement.

(7) If a supplementary document or replacement document is lodged with the Authority, the offer must be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.

(8) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to subscribe for securities or securities-based derivatives contracts, then —

- (a) where the securities or securities-based derivatives contracts have not been issued to the applicants, the person making the offer —
  - (i) must —
    - (A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the

applicants with an option to withdraw their applications; and

- (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;
  - (ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to withdraw their applications; or
  - (iii) must —
    - (A) treat the applications as withdrawn and cancelled, in which case the applications are deemed to have been withdrawn and cancelled; and
    - (B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or
- (b) where the securities or securities-based derivatives contracts have been issued to the applicants, the person making the offer —
- (i) must —
    - (A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of

how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; and

- (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;
- (ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; or
- (iii) must —
  - (A) treat the issue of the securities or securities-based derivatives contracts as void, in which case the issue is deemed void; and
  - (B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(9) Subsections (8)(b) and (11) have effect despite sections 76 and 76A, and Division 3A of Part 4, of the Companies Act 1967.

(10) An applicant who wishes to exercise the applicant's option under subsection (8)(a)(i) or (ii) to withdraw the applicant's application must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, upon which that person must, within 7 days from the receipt of such notification, pay to the applicant all moneys paid by the applicant on account of the applicant's application for the securities or securities-based derivatives contracts.

[4/2017]

(11) An applicant who wishes to exercise the applicant's option under subsection (8)(b)(i) or (ii) to return securities or securities-based derivatives contracts issued to the applicant must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this and return all documents (if any) purporting to be evidence of title to those securities or securities-based derivatives contracts to that person, upon which that person must, within 7 days from the receipt of such notification and documents (if any) pay to the applicant all moneys paid by the applicant for the securities or securities-based derivatives contracts, and the issue of those securities or securities-based derivatives contracts is deemed to be void.

[4/2017]

(12) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase securities or securities-based derivatives contracts, then —

(a) where the securities or securities-based derivatives contracts have not been transferred to the applicants, the person making the offer —

(i) must —

(A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement

document (as the case may be) and provide the applicants with an option to withdraw their applications; and

- (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;
  - (ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to withdraw their applications; or
  - (iii) must —
    - (A) treat the applications as withdrawn and cancelled, in which case the applications are deemed to have been withdrawn and cancelled; and
    - (B) within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or
- (b) where the securities or securities-based derivatives contracts have been transferred to the applicants, the person making the offer —

- (i) must —
  - (A) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice of how to obtain, or arrange to receive, a copy of the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; and
  - (B) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document;
- (ii) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document (as the case may be) and provide the applicants with an option to return, to the person making the offer, those securities or securities-based derivatives contracts which they do not wish to retain title in; or
- (iii) must treat the sale of the securities or securities-based derivatives contracts as void, in which case the sale is deemed void, and must —
  - (A) if documents purporting to evidence title to the securities or securities-based derivatives contracts (called in this paragraph the title documents) have been issued to the applicants —

- (AA) within 7 days from the date of lodgment of the supplementary document or replacement document, inform the applicants to return the title documents to the person making the offer within 14 days from the date of lodgment of the supplementary document or replacement document; and
- (AB) within 7 days from the date of receipt of the title documents or the date of lodgment of the supplementary document or replacement document, whichever is the later, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts; or
- (B) if no title documents have been issued to the applicants, within 7 days from the date of the lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(13) An applicant who wishes to exercise the applicant's option under subsection (12)(a)(i) or (ii) to withdraw the applicant's application must, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, upon which that person must, within 7 days of the receipt of such notification, pay to the applicant all moneys paid by the applicant on account of the applicant's application for the securities or securities-based derivatives contracts.

[4/2017]

(14) An applicant who wishes to exercise the applicant's option under subsection (12)(b)(i) or (ii) to return securities or securities-based derivatives contracts sold to the applicant must, within 14 days from the date of lodgment of the supplementary

document or replacement document, notify the person making the offer of this and return all documents (if any) purporting to evidence title to those securities or securities-based derivatives contracts to the person making the offer, upon which that person must, within 7 days from the receipt of such notification and documents (if any) pay to the applicant all moneys paid by the applicant for the securities or securities-based derivatives contracts and the sale of the securities or securities-based derivatives contracts is deemed to be void.

[4/2017]

(15) Any person who contravenes subsection (8) or (12) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(16) Any person who contravenes any other provision of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(17) For the purposes of subsection (1)(a), the reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

### **Stop order for prospectus and profile statement**

**242.**—(1) If a prospectus has been registered and —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included in it under section 243;
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or



- (d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of securities or securities-based derivatives contracts to which the prospectus relates direct that no or no further securities or securities-based derivatives contracts be allotted, issued or sold.

[4/2017]

- (2) If a profile statement has been registered and —

- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;
- (b) there is an omission from the profile statement of any information that is required to be included in it under section 246;
- (c) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or
- (d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of securities or securities-based derivatives contracts to which the profile statement relates direct that no or no further securities or securities-based derivatives contracts be allotted, issued or sold.

[4/2017]

(3) Despite subsections (1) and (2), the Authority must not serve a stop order if any of the securities or securities-based derivatives contracts to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on an approved exchange and trading in them has commenced.

[4/2017]

(4) The Authority must not serve a stop order under subsection (1) or (2) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the issuer or the trustee-manager of the business trust or, where applicable, the underlying entity or the business trust is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (aa) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of —
  - (i) any property of the person making the offer (being an entity), the issuer or, where applicable, the underlying entity;
  - (ii) any property of the trustee-manager of the business trust; or
  - (iii) the trust property of the business trust.

[4/2017]

(5) Where applications to subscribe for securities or securities-based derivatives contracts to which the prospectus or profile statement relates have been made prior to the stop order, then —

- (a) where the securities or securities-based derivatives contracts have not been issued to the applicants —
  - (i) the applications are deemed to have been withdrawn and cancelled; and
  - (ii) the person making the offer must, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or
- (b) where the securities or securities-based derivatives contracts have been issued to the applicants —

- (i) the issue of the securities or securities-based derivatives contracts is deemed to be void; and
- (ii) the person making the offer must, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(6) Subsection (5)(b) has effect despite sections 76 and 76A, and Division 3A of Part 4, of the Companies Act 1967.

(7) Where applications to purchase securities or securities-based derivatives contracts to which the prospectus or profile statement relates have been made prior to the stop order, then —

- (a) where the securities or securities-based derivatives contracts have not been transferred to the applicants —
  - (i) the applications are deemed to have been withdrawn and cancelled; and
  - (ii) the person making the offer must, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the securities or securities-based derivatives contracts; or
- (b) where the securities or securities-based derivatives contracts have been transferred to the applicants, the sale is deemed to be void, and the person making the offer must —
  - (i) if documents purporting to evidence title to the securities or securities-based derivatives contracts have been issued to the applicants —
    - (A) within 7 days from the date of the stop order, inform the applicants to return such documents to the person making the offer within 14 days from that date; and
    - (B) within 7 days from the date of the receipt of those documents or the date of the stop order,

whichever is the later, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts; or

- (ii) if no such documents have been issued to the applicants, within 7 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities or securities-based derivatives contracts.

[4/2017]

(8) If the Authority is of the opinion that any delay in serving a stop order pending the holding of a hearing required under subsection (4) is not in the interests of the public, the Authority may, without giving an opportunity to be heard, serve an interim stop order on the person making the offer directing that no or no further securities or securities-based derivatives contracts to which the prospectus or profile statement relates be allotted, issued or sold.

[4/2017]

(9) An interim stop order, unless revoked by the Authority, is in force —

(a) in a case where —

- (i) it is served during a hearing under subsection (4); or
- (ii) a hearing under subsection (4) is commenced while it is in force,

until the Authority makes an order under subsection (1) or (2); and

(b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

(10) Subsections (5) and (7) do not apply where only an interim stop order has been served.

(11) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing

offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

(12) Any person who contravenes subsection (5) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(13) For the purposes of subsections (1)(a) and (2)(a), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

### **Contents of prospectus**

**243.**—(1) A prospectus for an offer of securities or securities-based derivatives contracts must contain —

- (a) all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified in subsection (3); and
- (b) the matters prescribed by the Authority.

[4/2017]

(2) The prospectus must, with respect to subsection (1)(a), contain such information —

- (a) only to the extent to which it is reasonable for investors and their professional advisers to expect to find in the prospectus; and
- (b) only to the extent that a person whose knowledge is relevant —
  - (i) actually knows the information; or
  - (ii) in the circumstances ought reasonably to have obtained the information by making enquiries.

(3) The matters referred to in subsection (1)(a) relate to —

- (a) the rights and liabilities attaching to the securities or securities-based derivatives contracts;

- (b) in the case of an offer of securities or securities-based derivatives contracts other than units or derivatives of units in a business trust, the assets and liabilities, profits and losses, financial position and performance, and prospects of the issuer;
- (c) if the underlying entity is controlled by —
- (i) the person making the offer;
  - (ii) one or more of the related parties of the person making the offer; or
  - (iii) the person making the offer and one or more of that person's related parties,
- the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity;
- (d) in the case of an offer of units of shares or debentures, where —
- (i) the person making the offer is or will be required to issue or deliver the relevant units, or meet financial or contractual obligations to the holders of those units; or
  - (ii) an entity which is controlled by one of the following is or will be required to issue or deliver the relevant units, or meet financial or contractual obligations to the holders of those units:
    - (A) the person making the offer;
    - (B) one or more of the related parties of the person making the offer;
    - (C) the person making the offer and one or more of that person's related parties,
- the capacity of that person or entity to issue or deliver the relevant securities, or the ability of that person or entity to meet those financial or contractual obligations;

- (e) in the case of an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, where —
- (i) the person making the offer is the trustee-manager of the business trust; or
  - (ii) the trustee-manager of the business trust is controlled by —
    - (A) the person making the offer;
    - (B) one or more of the related parties of the person making the offer; or
    - (C) the person making the offer and one or more of that person's related parties,the assets and liabilities, profits and losses, financial position and performance of the business trust and of the trustee-manager, and the prospects of the business trust;
- (f) in the case of an offer of securities or securities-based derivatives contracts being derivatives of units in a business trust issued by an entity (*A*) other than the trustee-manager of the business trust, where —
- (i) the person making the offer is *A*; or
  - (ii) *A* is controlled by —
    - (A) the person making the offer;
    - (B) one or more of the related parties of the person making the offer; or
    - (C) the person making the offer and one or more of that person's related parties,the assets and liabilities, profits and losses, financial position and performance, and prospects of *A*; and
- (g) in the case of an offer of securities or securities-based derivatives contracts being derivatives of units in the business trust, where —

- (i) the person making the offer is or will be required to issue or deliver the relevant units or derivatives of units, or meet financial or contractual obligations to the holders of those derivatives of units; or
- (ii) an entity which is controlled by one of the following is or will be required to issue or deliver the relevant units or derivatives of units, or meet financial or contractual obligations to the holders of those derivatives of units:
  - (A) the person making the offer;
  - (B) one or more of the related parties of the person making the offer;
  - (C) the person making the offer and one or more of that person's related parties,

the capacity of that person or entity to issue or deliver the relevant units or derivatives of units in that business trust, or the ability of that person or entity to meet those financial or contractual obligations.

[4/2017]

(4) In deciding what information must be included under subsection (1)(a), regard must be had to —

- (a) the nature of the securities or securities-based derivatives contracts and the nature of the entity concerned;
- (b) the matters that likely investors may reasonably be expected to know; and
- (c) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.

[4/2017]

(4A) Subject to any condition or restriction as may be prescribed by regulations made under section 341, the information mentioned in subsection (1) may be incorporated in the prospectus by reference to a document (called in this subsection and subsection (4B) the reference document) lodged with the Authority together with the prospectus.

[4/2017]



(4B) For the purposes of this Division, the information contained in the reference document is to be regarded as part of the prospectus.

[4/2017]

(5) For the purposes of subsection (2)(b), a person's knowledge is relevant only if the person is one of the following:

- (a) the person making the offer;
- (b) if the person making the offer is an entity, a director or an equivalent person of the entity;
- (c) the issuer;
- (d) a director or an equivalent person, or a proposed director or an equivalent person, of the issuer;
- (da) a person named in the prospectus with the person's consent as an underwriter to the issue or sale;
- (e) a person named in the prospectus as a stockbroker to the issue or sale if the person participates in any way in the preparation of the prospectus;
- (f) a person named in the prospectus with the person's consent as having made a statement —
  - (i) that is included in the prospectus; or
  - (ii) on which a statement made in the prospectus is based;
- (g) a person named in the prospectus with the person's consent as having performed a particular professional or advisory function.

(6) A condition requiring or binding an applicant for securities or securities-based derivatives contracts to waive compliance with any requirement of this section, or purporting to affect the applicant with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

[4/2017]

(7) This section does not affect any liability that a person has under any other law.

(8) In subsection (3)(e) —

“assets and liabilities, profits and losses, financial position and performance”, in relation to a business trust, means the assets and liabilities, profits and losses, financial position and performance of that business trust derived from the accounting records and other records kept by the trustee-manager of that business trust;

“prospects”, in relation to a business trust, means the business and financial prospects anticipated with respect to the operations of the trustee-manager of the business trust, in its capacity as trustee-manager of the business trust.

[4/2017]

**244.** [*Repealed by Act 16 of 2003*]

### **Retention of over-subscriptions and statement of asset-backing in debenture issues**

**245.**—(1) An entity must not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the entity has specified in the prospectus —

- (a) that it expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than 25% in excess of the amount of the issue as disclosed in the prospectus.

(2) Subject to regulations made by the Authority for the purposes of this subsection, where an entity specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions —

- (a) the entity must not make, authorise or permit any statement of or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the entity and of its guarantor entities; and

(b) the prospectus must contain a statement or reference as to what the total assets and total liabilities of the entity would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

(3) Every entity or other person that contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

### **Contents of profile statement**

**246.**—(1) A profile statement for an offer of securities or securities-based derivatives contracts must contain —

- (a) the following particulars:
- (i) identification of the person making the offer;
  - (ia) where the person making the offer is not the issuer, identification of the issuer and, where applicable, the underlying entity;
  - (ib) in the case of an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, identification of the business trust, the trustee-manager of the business trust and the issuer;
  - (ii) identification of the persons signing the profile statement;
  - (iii) the nature of the securities or securities-based derivatives contracts;
  - (iv) the nature of the risks involved in investing in the securities or securities-based derivatives contracts;
  - (v) details of all amounts payable in respect of the securities or securities-based derivatives contracts (including any amount by way of fee, commission or charge);

- (b) a statement that copies of the prospectus are available for collection at the times and places specified in the profile statement; and
- (c) a statement that the persons referred to in section 240(4A) who have signed the profile statement are satisfied that the profile statement contains a fair summary of the key information in the prospectus.

[4/2017]

- (2) A profile statement must not contain —
- (a) any statement that is false or misleading in the form and context in which it is included;
  - (b) any material information that is not contained in the prospectus; and
  - (c) any material information that differs in any material particular from that set out in the prospectus.

(3) For the purposes of subsection (2)(a), the reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

### **Exemption from requirements as to form or content of prospectus or profile statement**

**247.**—(1) The Authority may exempt any person or any prospectus or profile statement from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as the Authority may determine.

(2) The Authority must not grant an exemption under subsection (1) unless it is of the opinion that —

- (a) the cost of complying with the requirement in respect of which exemption has been applied for outweighs the resulting protection to investors; or
- (b) it would not be prejudicial to the public interest if the requirement in respect of which exemption has been applied for were dispensed with.

(3) The Authority may exempt any class of persons, or any class or description of prospectuses or profile statements, from any requirement of this Act relating to the form or content of a prospectus or profile statement, subject to such conditions or restrictions as the Authority may determine.

(4) [*Deleted by Act 16 of 2003*]

(5) Any person who contravenes any of the conditions or restrictions imposed under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

**Exemption for certain governmental and international entities as regards signing of copy of prospectus or profile statement by all directors or equivalent persons**

**248.**—(1) This section applies only to entities that are both of a governmental and international character.

(2) An entity to which this section applies may apply in writing to the Authority for an exemption from the requirements of section 240(1)(a)(ii), (4)(b), (4A), (13)(c) and (14)(c) and the Authority may, if it considers those requirements unduly burdensome on the entity, exempt such entity from complying therewith.

(3) The Authority may subject such exemption to a requirement that such minimum number of directors or equivalent persons who are resident in Singapore as the Authority may, in that case, decide must sign the copy of the prospectus or profile statement.

(4) In the event that no director or equivalent person is resident in Singapore, the Authority may permit a duly authorised agent to sign the prospectus or profile statement so long as such authorisation is supported by a resolution of the board of the entity.

(5) The Authority may, if satisfied that a particular entity cannot comply with any of the requirements in subsection (3) or (4), grant the exemption applied for.

(6) Any prospectus or profile statement that complies with the terms of exemption granted by the Authority is deemed to be a prospectus or profile statement for the purposes of this Division and a copy of such prospectus or profile statement must be registered by the Authority.

### **Expert's consent to issue of prospectus or profile statement containing statement by him or her**

**249.**—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement which includes a statement purporting to be made by, or based on a statement made by, an expert, the prospectus or profile statement must not be issued unless —

- (a) the expert has given, and has not before the registration of the prospectus or profile statement (as the case may be) withdrawn his or her written consent to the issue thereof with the statement included in the form and context in which it is included; and
- (b) there appears in the prospectus or profile statement (as the case may be) a statement that the expert has given and has not withdrawn his or her consent.

[4/2017]

(1A) Every person making the offer must cause a true copy of every written consent referred to in subsection (1) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if the issuer has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(1B) Every issuer must keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities or securities-based derivatives contracts to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (1A) for a period of at least 6 months after the registration of the prospectus or profile statement.

[4/2017]

(2) If any prospectus or profile statement is issued in contravention of subsection (1), the person making the offer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(3) The Authority may exempt any person or class of persons, or any prospectus or profile statement or class or description of prospectuses or profile statements, from this section, subject to such conditions or restrictions as the Authority may determine.

(4) Any person who contravenes any of the conditions or restrictions imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

### **Consent of issue manager and underwriter to being named in prospectus or profile statement**

**249A.**—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement in which a person is named as the issue manager to the offer, the prospectus or profile statement must not be issued unless —

- (a) the person has given, and has not before the registration of the prospectus or profile statement (as the case may be) withdrawn the person's written consent to being named in the prospectus or profile statement as issue manager to that offer; and
- (b) there appears in the prospectus or profile statement (as the case may be) a statement that the person has given and has not withdrawn the person's consent.

[4/2017]

(2) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement in which a person is named as the underwriter (but not a sub-underwriter) to the offer, the prospectus or profile statement must not be issued unless —

- (a) the person has given, and has not before the registration of the prospectus or profile statement (as the case may be) withdrawn the person's written consent to being named in the prospectus or profile statement as underwriter to that offer; and
- (b) there appears in the prospectus or profile statement (as the case may be) a statement that the person has given and has not withdrawn such consent.

[4/2017]

(3) If any prospectus or profile statement is issued in contravention of subsection (1) or (2), the person making the offer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(4) Every person making the offer must cause a true copy of every written consent referred to in subsections (1) and (2) to be deposited, within 7 days after the registration of the prospectus or profile statement, at the registered office of the issuer in Singapore or, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(5) Every issuer must keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities or securities-based derivatives contracts to which the prospectus or profile statement relates, without payment of any fee, a true copy of every written consent deposited in accordance with subsection (4) for a period of at least 6 months after the registration of the prospectus or profile statement.

[4/2017]



**Duration of validity of prospectus and profile statement**

**250.**—(1) A person must not make an offer of securities or securities-based derivatives contracts, or allot, issue or sell any securities or securities-based derivatives contracts, on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

[4/2017]

(2) In a case where an entity makes an offer of securities or securities-based derivatives contracts or where the securities or securities-based derivatives contracts being offered are those issued by an entity or a proposed entity, an officer or equivalent person or a promoter of the entity or proposed entity must not authorise or permit —

- (a) the offer of those securities or securities-based derivatives contracts; or
- (b) the allotment, issue or sale of those securities or securities-based derivatives contracts,

on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

[4/2017]

(3) The period under subsection (1) or (2) is —

- (a) in a case where the securities or securities-based derivatives contracts are debentures or units of debentures issued under a debenture issuance programme under section 240A, 24 months from the date of registration by the Authority of the base prospectus in relation to such offer, allotment, issue or sale; or
- (b) in any other case, 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.

[4/2017]

(4) If default is made in complying with subsection (1) or (2), the person and, in the case of an entity or a proposed entity, every officer or equivalent person or promoter of the entity or proposed entity shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(5) An allotment, an issue or a sale of securities or securities-based derivatives contracts that is made in contravention of subsection (1) or (2) is not, by reason only of that fact, voidable or void.

[4/2017]

### **Restrictions on advertisements, etc.**

**251.**—(1) If a prospectus is required for an offer or intended offer of securities or securities-based derivatives contracts, a person must not —

- (a) advertise the offer or intended offer; or
- (b) publish a statement that —
  - (i) directly or indirectly refers to the offer or intended offer; or
  - (ii) is reasonably likely to induce persons to subscribe for or purchase the securities or securities-based derivatives contracts,

unless the advertisement or publication is authorised by this section.

[4/2017]

(2) In determining whether a statement —

- (a) indirectly refers to an offer or intended offer of securities or securities-based derivatives contracts; or
- (b) is reasonably likely to induce persons to subscribe for or purchase securities or securities-based derivatives contracts,

regard must be had to whether the statement —

- (c) forms part of the normal advertising —
  - (i) of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; or

- (ii) by a trustee-manager of a business trust on behalf of the business trust in respect of the products or services offered by the trustee-manager on behalf of the business trust, and is genuinely directed at maintaining existing customers, or attracting new customers, for those products or services;
- (d) communicates information that materially deals with the affairs of the entity or the business trust; and
- (e) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

[4/2017]

(3) Despite subsection (6), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made without contravening subsection (1), if —

- (a) the front page of the preliminary document contains —
  - (i) the following statement:

“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.”;
  - (ii) a statement that a person to whom a copy of the preliminary document has been issued must not circulate it to any other person; and
  - (iii) a statement in bold lettering that no offer or agreement may be made on the basis of the preliminary document to purchase or subscribe for any securities or securities-based derivatives contracts to which the preliminary document relates;

- (b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of the securities or securities-based derivatives contracts to which the preliminary document relates, or the acceptance of such an offer by any person; and
- (c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

[4/2017]

(4) Despite subsection (6), a person does not contravene subsection (1) —

- (a) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made; or
- (b) by presenting oral or written material on matters contained in a prospectus, profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of securities or securities-based derivatives contracts, before the prospectus or profile statement is registered by the Authority, for the sole purpose of equipping any of the following persons with knowledge of the securities or securities-based derivatives contracts in order to enable the person to carry on the regulated activity of dealing in capital markets products that are securities or securities-based derivatives contracts, or to provide any financial advisory service in relation to the securities or securities-based derivatives contracts:
  - (i) a person licensed under this Act in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;

- (ii) an exempt person;
- (iii) a person who is a representative in respect of dealing in capital markets products that are securities or securities-based derivatives contracts under this Act;
- (iv) a representative of an exempt person;
- (v) a person licensed under the Financial Advisers Act 2001 in respect of advising on any investment product;
- (vi) an exempt financial adviser;
- (vii) a person who is a representative in respect of advising on any investment product under the Financial Advisers Act 2001;
- (viii) a representative of an exempt financial adviser.

[34/2012; 4/2017]

(5) To avoid doubt, a person may disseminate any of the following without contravening subsection (1):

- (a) a prospectus or profile statement that has been registered by the Authority under section 240;
- (b) a product highlights sheet in respect of which section 240AA(1)(a) and (b) has been complied with and which is disseminated with a prospectus or profile statement that has been registered by the Authority under section 240.

[4/2017]

(6) Before a prospectus or profile statement is registered, an advertisement or publication does not contravene subsection (1) if it contains only the following:

- (a) a statement that identifies —
  - (i) in the case of an offer of securities or securities-based derivatives contracts being units or derivatives of units in a business trust, the units or derivatives of units, the person making the offer, the issuer, the business trust and the trustee-manager of the business trust; and

- (ii) in any other case, the securities, securities-based derivatives contracts, the person making the offer, the issuer and, where applicable, the underlying entity;
- (b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;
- (c) a statement that anyone wishing to acquire the securities or securities-based derivatives contracts will need to make an application in the manner set out in the prospectus or profile statement;
- (d) a statement of how to obtain, or arrange to receive, a copy of the prospectus or profile statement.

[4/2017]

(7) To satisfy subsection (6), the advertisement or publication must include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the statement referred to in paragraph (d) of that subsection.

(8) After a prospectus or profile statement is registered with the Authority, an advertisement or a publication does not contravene subsection (1) if —

- (a) it includes a statement that the prospectus or profile statement in respect of the offer of securities or securities-based derivatives contracts is available for collection at the times and places specified in the statement;
- (b) it includes a statement that anyone wishing to acquire the securities or securities-based derivatives contracts will need to make an application in the manner set out in the prospectus or profile statement;
- (c) it does not contain any information that is not included in the prospectus or profile statement; and
- (d) it complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(9) An advertisement or a publication does not contravene subsection (1) if it —

- (a) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange made by any person;
- (b) consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the trustee-manager of the business trust, the underlying entity, the unitholders of the business trust or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;
- (c) consists solely of a report about the issuer, the business trust or the underlying entity that is published by the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity (as the case may be), which —
  - (i) does not contain information that materially affects the affairs of the issuer, the business trust or the underlying entity other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a disclosure, notice or report mentioned in paragraph (a) or (b); and
  - (ii) does not refer (directly or indirectly) to the offer or intended offer;
- (d) consists solely of a statement made by the person making the offer, the issuer, the trustee-manager of the business trust or the underlying entity that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;
- (e) is a news report, or a genuine comment, by a person other than any person referred to in paragraph (f)(i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio,

television or any other means of broadcasting or communication, relating to —

- (i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;
  - (ii) a disclosure, notice or report referred to in paragraph (a);
  - (iii) a notice, report, presentation, general meeting or proposed general meeting referred to in paragraph (b);
  - (iv) a report referred to in paragraph (c); or
  - (v) a product highlights sheet;
- (f) is a report about the securities or securities-based derivatives contracts which are the subject of the offer or intended offer, published by someone who is not —
- (i) the person making the offer, the issuer, the underlying entity or (where the securities or securities-based derivatives contracts are units or derivatives of units in a business trust) the trustee-manager of the business trust;
  - (ii) a director or an equivalent person of the person making the offer, the issuer, the underlying entity or (where the securities or securities-based derivatives contracts are units or derivatives of units in a business trust) the trustee-manager of the business trust;
  - (iii) a person who has an interest in the success of the issue or sale of the securities or securities-based derivatives contracts; or
  - (iv) a person acting at the instigation of, or by arrangement with, any person mentioned in sub-paragraph (i), (ii) or (iii);



- (g) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or
- (h) is a publication made by the person making the offer, the issuer, the underlying entity or (where the offer is of units or derivatives of units in a business trust) the trustee-manager of the business trust solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —
  - (i) an earlier news report or a genuine comment referred to in paragraph (e); or
  - (ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (10),

provided that the firstmentioned publication does not contain any material information that is not included in the prospectus.

[2/2009; 34/2012; 4/2017]

- (10) A person does not contravene subsection (1) if —
  - (a) the person publishes any advertisement or publication in the ordinary course of a business of —
    - (i) publishing a newspaper, periodical or magazine; or
    - (ii) broadcasting by radio, television, or any other means of broadcasting or communication; and
  - (b) the person did not know and had no reason to suspect that its publication would constitute a contravention of subsection (1).

(11) Subsection (9)(e) and (f) does not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(12) Any person who —

(a) contravenes subsection (1); or

(b) knowingly authorises or permits the publication or dissemination of any advertisement or statement mentioned in subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(13) This section does not affect any liability that a person has under any other law.

(14) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as the Authority may determine.

(15) Any person who contravenes any of the conditions or restrictions imposed under subsection (14) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(16) For the purposes of this section, any reference to publishing a statement includes a reference to making a statement, whether oral or written, which is reasonably likely to be published.

(17) For the purposes of subsections (1) and (2), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(18) For the purposes of subsection (2)(d), the reference to affairs of the entity or the business trust —

(a) in the case where the entity is a corporation, includes a reference to the matters referred to in section 2(2); and

(b) in any other case, is a reference to such matters as the Authority may prescribe.

[4/2017]

(18A) In subsection (4) —

“exempt financial adviser” and “financial advisory service” have the meanings given by section 2(1) of the Financial Advisers Act 2001;

“representative” —

(a) in relation to dealing in capital markets products that are securities or securities-based derivatives contracts under this Act or an exempt person, has the meaning given by section 2(1); or

(b) in relation to advising on any investment product under the Financial Advisers Act 2001 or an exempt financial adviser, has the meaning given by section 2(1) of that Act.

[34/2012; 4/2017]

(19) For the purposes of subsection (9)(c)(i), the reference to affairs of the issuer, underlying entity or business trust —

(a) in the case where the issuer or underlying entity is a corporation, includes a reference to the matters referred to in section 2(2); and

(b) in any other case, is a reference to such matters as the Authority may prescribe.

[4/2017]

### **Persons liable on prospectus or profile statement to inform person making offer about certain deficiencies**

**252.**—(1) A person referred to in section 254(3) (other than paragraph (a)) must notify in writing the person making the offer of securities or securities-based derivatives contracts, as soon as practicable, if the firstmentioned person becomes aware at any time after the prospectus or profile statement is registered by the Authority but before the close of the offer that —

- (a) a statement in the prospectus or the profile statement is false or misleading;
- (b) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or
- (c) a new circumstance —
  - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
  - (ii) would have been required to be included in the prospectus under section 243, or required to be included in the profile statement under section 246 (as the case may be) if it had arisen before the prospectus or the profile statement was lodged with the Authority,

and the failure to so notify would have been materially adverse from the point of view of an investor.

[4/2017]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(3) For the purposes of subsection (1)(a), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

### **Criminal liability for false or misleading statements**

**253.**—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 280, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

- (a) a false or misleading statement is contained in —
  - (i) the prospectus or the profile statement; or

- (ii) any application form for the securities or securities-based derivatives contracts;
- (b) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or
- (c) there is an omission to state a new circumstance that —
- (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
  - (ii) would have been required to be included in the prospectus under section 243, or required to be included in the profile statement under section 246 (as the case may be) if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (4) shall be guilty of an offence even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission, and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person made the statement without having reasonable grounds for making the statement.

(3) A person does not contravene subsection (1) if the false or misleading statement, or the omission to state any information or new circumstance, is not materially adverse from the point of view of the investor.

- (4) The persons guilty of the offence are —
- (a) the person making the offer;
  - (b) where the person making the offer is an entity —
    - (i) each director or equivalent person of the entity; and
    - (ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the entity;
  - (c) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of that person's related parties —
    - (i) the issuer;
    - (ii) each director or equivalent person of the issuer; and
    - (iii) each person who is, and who has consented to be, named in the prospectus or profile statement as a proposed director or an equivalent person of the issuer;
  - (d) an issue manager to the offer of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or profile statement, if —
    - (i) the issue manager intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;
    - (ii) knowing that the statement in the prospectus or profile statement is false or misleading or that the information or circumstance has been omitted, the issue manager fails to take such remedial action as is appropriate in the circumstances without delay; or
    - (iii) the issue manager is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;

- (e) an underwriter (but not a sub-underwriter) to the issue or sale of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or profile statement, if —
- (i) the underwriter intentionally or recklessly makes the false or misleading statement or omits to state the information or circumstance;
  - (ii) knowing that the statement is false or misleading or that the information or circumstance has been omitted, the underwriter fails to take such remedial action as is appropriate in the circumstances without delay; or
  - (iii) the underwriter is reckless as to whether the statement is false or misleading or whether the information or circumstance has been included;
- (f) a person named in the prospectus or the profile statement with the person's consent as having made —
- (i) the statement that is false or misleading, if the person intentionally or recklessly makes that statement; or
  - (ii) a statement on which the false or misleading statement is based, if the person knows that the second-mentioned statement is false or misleading and fails to take immediate steps to withdraw the person's consent,
- but only in respect of the inclusion of the false or misleading statement; and
- (g) any other person who intentionally or recklessly makes the false or misleading statement, or omits to state the information or circumstance (as the case may be) but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.

[4/2017]

- (5) For the purposes of subsection (4) and this subsection —
- (a) remedial action includes any of the following:
    - (i) preventing the statement from being included, or having the information or circumstance included, in the prospectus or profile statement, as the case may be;
    - (ii) procuring the lodgment of a supplementary or replacement prospectus under section 241; and
  - (b) a person is reckless as to the matter referred to in subsection (4)(d)(iii) or (e)(iii) if, having been put upon inquiry that the statement to be, or which has been, included in the prospectus or profile statement is likely to be false or misleading, that the information or circumstance is likely to be required to be included in that document, or that there is likely to be an omission to state the information or circumstance in that document, the person fails to —
    - (i) make all inquiries as are reasonable in the circumstances to verify this; and
    - (ii) take such remedial action as is appropriate in the circumstances without delay, if such action is warranted by the outcome of the inquiries.
- (6) For the purposes of this section, any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

### **Civil liability for false or misleading statements**

**254.**—(1) Where an offer of securities or securities-based derivatives contracts is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 280, where a prospectus or profile statement is prepared and issued in relation to the offer, and —

- (a) a false or misleading statement is contained in —
  - (i) the prospectus or the profile statement; or



- (ii) any application form for the securities or securities-based derivatives contracts;
- (b) there is an omission to state any information required to be included in the prospectus under section 243 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or
- (c) there is an omission to state a new circumstance that —
  - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
  - (ii) would have been required by section 243 to be included in the prospectus, or required to be included in the profile statement under section 246 (as the case may be) if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (3) are liable to compensate any person who suffers loss or damage as a result of the false or misleading statement in or omission from the prospectus or the profile statement, even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission.

[4/2017]

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

- (3) The persons liable are —
- (a) the person making the offer;
  - (b) where the person making the offer is an entity —
    - (i) each director or equivalent person of the entity; and
    - (ii) if the entity is also the issuer, each person who is, and who has consented to be, named in the prospectus or

- profile statement as a proposed director or an equivalent person of the entity;
- (c) where the issuer is controlled by the person making the offer, one or more of the related parties of the person making the offer, or the person making the offer and one or more of that person's related parties —
    - (i) the issuer;
    - (ii) each director or equivalent person of the issuer; and
    - (iii) each person who is, and who has consented to be, named in the prospectus or the profile statement as a proposed director or an equivalent person of the issuer;
  - (d) an issue manager to the offer of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or the profile statement;
  - (da) an underwriter (but not a sub-underwriter) to the issue or sale of the securities or securities-based derivatives contracts who is, and who has consented to be, named in the prospectus or the profile statement;
  - (e) a person named in the prospectus or the profile statement with the person's consent as having made a statement —
    - (i) that is included in the prospectus or the profile statement; or
    - (ii) on which a statement made in the prospectus or the profile statement is based,but only in respect of the inclusion of that statement; and
  - (f) any other person who made the false or misleading statement or omitted to state the information or circumstance (as the case may be) but only in respect of the inclusion of the statement or the omission to state the information or circumstance.

(4) A person who acquires securities or securities-based derivatives contracts as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the securities or securities-based derivatives contracts in reliance on both the profile statement and the prospectus for the offer.

[4/2017]

(4A) For the purposes of this section, any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(5) No action under subsection (1) may be commenced after the expiration of 6 years from the date on which the cause of action arose.

(6) This section does not affect any liability that a person has under any other law.

## Defences

**255.**—(1) A person referred to in section 253(4)(a), (b) or (c) is not liable under section 253(1), and a person referred to in section 254(3) is not liable under section 254(1), only because of a false or misleading statement in a prospectus or a profile statement if the person proves that the person —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the statement was not false or misleading.

(2) A person referred to in section 253(4)(a), (b) or (c) is not liable under section 253(1), and a person referred to in section 254(3) is not liable under section 254(1), only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person proves that the person —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that there was no omission from the prospectus or profile statement in relation to that matter.

(3) A person is not liable under section 253(1) or 254(1) only because of a false or misleading statement in, or an omission from, a prospectus or a profile statement if the person proves that the person placed reasonable reliance on information given to the person by —

(a) if the person is an entity, someone other than —

(i) a director or an equivalent person; or

(ii) an employee or agent,

of the entity; or

(b) if the person is an individual, someone other than an employee or agent of the individual.

(4) For the purposes of subsection (3), a person is not the agent of an entity or individual merely because that person performs a particular professional or advisory function for the entity or individual.

(5) A person who is named in a prospectus or a profile statement as —

(a) a proposed director or an equivalent person of the issuer, or an issue manager or underwriter;

(b) having made a statement included in the prospectus or the profile statement; or

(c) having made a statement on the basis of which a statement is included in the prospectus or the profile statement,

is not liable under section 253(1) or 254(1) only because of a false or misleading statement in, or an omission from, the prospectus or the profile statement if the person proves that the person publicly withdrew the person's consent to being named in the prospectus or the profile statement in that way.

(6) A person is not liable under section 253(1) or 254(1) only because of a new circumstance that has arisen since the prospectus or the profile statement was lodged with the Authority if the person proves that the person was not aware of the matter.

(7) For the purposes of this section, any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

**256.** [*Repealed by Act 1 of 2005*]

**Document containing offer of securities or securities-based derivatives contracts for sale deemed prospectus**

**257.**—(1) Subsection (2) applies where —

- (a) an entity allots or agrees to allot to any person any securities or securities-based derivatives contracts of the entity or a business trust (as the case may be) with a view to all or any of them being subsequently offered for sale to another person; and
- (b) such offer (called in this section a subsequent offer) does not qualify for an exemption under Subdivision (4) of this Division (other than section 280).

[4/2017]

(2) Any document by which the subsequent offer is made is for all purposes deemed to be a prospectus issued by the entity, and the entity is for all purposes deemed to be the person making the offer, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosure in prospectuses, or otherwise relating to prospectuses, apply and have effect accordingly as if —

- (a) an offer of securities or securities-based derivatives contracts has been made; and
- (b) persons accepting the subsequent offer in respect of any securities or securities-based derivatives contracts were subscribers therefor,

but without affecting the liability (if any) of the persons making the subsequent offer, in respect of statements or non-disclosures in the document or otherwise.

[4/2017]

(3) For the purposes of this Act, unless the contrary is proved, it is sufficient evidence that an allotment of, or an agreement to allot,

securities or securities-based derivatives contracts was made with a view to the securities or securities-based derivatives contracts being subsequently offered for sale if it is shown —

- (a) that an offer of the securities or securities-based derivatives contracts or of any of them for sale was made within 6 months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the entity in respect of the securities or securities-based derivatives contracts had not been so received.

[4/2017]

(4) The requirements of this Division as to prospectuses have effect as though the persons making the subsequent offer were persons named in the prospectus as directors or equivalent persons of the entity.

(5) In addition to complying with the other requirements of this Division, the document making the subsequent offer must state —

- (a) the net amount of the consideration received or to be received by the entity in respect of the securities or securities-based derivatives contracts being offered; and
- (b) the place and time at which a copy of the contract under which the securities or securities-based derivatives contracts have been or are to be allotted may be inspected.

[4/2017]

### **Application and moneys to be held in trust in separate bank account until allotment**

**258.**—(1) All application and other moneys paid prior to allotment by any applicant on account of securities or securities-based derivatives contracts offered to the applicant must, until the allotment of the securities or securities-based derivatives contracts, be held by the person making the offer of the securities or securities-based derivatives contracts upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the person solely for the purpose of depositing the application

and other moneys that are paid by applicants for those securities or securities-based derivatives contracts.

[4/2017]

(2) There is no obligation or duty on any bank with which any such moneys have been deposited to enquire into or see to the proper application of those moneys, so long as the bank acts in good faith.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

**Allotment of securities or securities-based derivatives contracts where prospectus indicates application to list on approved exchange**

**259.**—(1) Where a prospectus states or implies that application has been or will be made for permission for the securities or securities-based derivatives contracts offered thereby to be listed for quotation on any approved exchange, and —

- (a) the permission is not applied for in the form required by the approved exchange within 3 days from the date of the issue of the prospectus; or
- (b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the approved exchange,

then —

- (c) any allotment whenever made of securities or securities-based derivatives contracts made on an application pursuant to the prospectus is, subject to subsection (3), void; and

- (d) any person who continues to allot such securities or securities-based derivatives contracts after the period specified in paragraph (a) or (b), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), the person making the offer must, subject to subsection (3), immediately repay without interest all moneys received from applicants pursuant to the prospectus, and if any such moneys is not repaid within 14 days after the person making the offer so becomes liable to repay them, then —

- (a) the person making the offer is liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days; and
- (b) where the person making the offer is an entity, in addition to the liability of the entity, the directors or equivalent persons of the entity are jointly and severally liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days.

(3) Where in relation to any securities or securities-based derivatives contracts —

- (a) permission is not applied for as mentioned in subsection (1)(a); or
- (b) permission is not granted as mentioned in subsection (1)(b),

the Authority may, on the application of the issuer made before any of the securities or securities-based derivatives contracts is purported to be allotted, exempt the allotment of the securities or securities-based



derivatives contracts from the provisions of this section, and the Authority must give notice of such exemption in the *Gazette*.

[4/2017]

(4) A director or an equivalent person is not liable under subsection (2) if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

(5) Any condition requiring or binding any applicant for securities or securities-based derivatives contracts to waive compliance with any requirement of this section or purporting to do so is void.

[4/2017]

(6) Without limiting the application of any of its provisions, this section has effect —

- (a) in relation to any securities or securities-based derivatives contracts agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if the person had applied therefor pursuant to the prospectus; and
- (b) in relation to a prospectus offering securities or securities-based derivatives contracts for sale as if a reference to sale were substituted for a reference to allotment.

[4/2017]

(7) All moneys received from applicants pursuant to the prospectus must be kept in a separate bank account so long as the person making the offer may become liable to repay it under subsection (2).

(8) Any person who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(9) Where the approved exchange has within the time specified in subsection (1)(b) granted permission subject to compliance with any requirements specified by the approved exchange, permission is deemed to have been granted by the approved exchange if the directors or equivalent persons have given to the approved exchange

an undertaking in writing to comply with the requirements of the approved exchange.

[4/2017]

(10) If any such undertaking referred to in subsection (9) is not complied with, each director or equivalent person who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(11) A person must not issue a prospectus inviting persons to subscribe for securities or securities-based derivatives contracts of an entity if it includes —

- (a) a false or misleading statement that permission has been granted for those securities or securities-based derivatives contracts to be listed for quotation on, dealt in or quoted on any approved exchange; or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation, dealing in or quoting the securities or securities-based derivatives contracts on any approved exchange, or to any requirement of an approved exchange, unless —
  - (i) that statement is or is to the effect that permission has been granted, or that application has been or will be made to the approved exchange within 3 days after the date of the issue of the prospectus; or
  - (ii) that statement has been approved by the Authority for inclusion in the prospectus.

[4/2017]

(12) Any person who contravenes subsection (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(13) Where a prospectus contains a statement to the effect that the memorandum and articles or other constituent document or documents of the issuer comply, or have been drawn so as to comply, with the requirements of any approved exchange, the prospectus is, unless the contrary intention appears from the prospectus, deemed for the purposes of this section to imply that application has been, or will be, made for permission for the securities or securities-based derivatives contracts to which the prospectus relates to be listed for quotation on the approved exchange.

[4/2017]

### **Prohibition of allotment unless minimum subscription received**

**260.**—(1) A person must not make an allotment of any securities or securities-based derivatives contracts of a company or business trust unless —

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the securities or securities-based derivatives contracts so subscribed has been received by the company or the trustee-manager, as the case may be.

[4/2017]

(1A) Despite subsection (1), if a cheque for the sum payable mentioned in subsection (1) has been received by the company or the trustee-manager of the business trust (as the case may be), the sum is treated as not having been received by the company or the trustee-manager (as the case may be) until the cheque is paid by the bank on which the cheque is drawn.

[4/2017]

(2) The minimum subscription must —

- (a) be calculated based on the price at which each share or debenture, each unit of share or debenture, or each unit or derivative of a unit in a business trust, is or will be offered; and
- (b) be reckoned exclusively of any amount payable otherwise than in cash.

[4/2017]

(3) The amount payable on application on each share or debenture, or each unit of share or debenture, or each unit or derivative of a unit in a business trust, offered must not be less than 5% of the price at which the share or debenture, or unit of share or debenture, or unit or derivative of a unit in a business trust, is or will be offered.

[4/2017]

(4) If the conditions referred to in subsection (1)(a) and (b) have not been satisfied on the expiration of 4 months after the first issue of the prospectus, all moneys received from applicants for securities or securities-based derivatives contracts must be immediately repaid to them without interest.

[4/2017]

(5) If any money mentioned in subsection (4) is not repaid within 5 months after the issue of the prospectus, the directors of the company or the directors of the trustee-manager of the business trust (as the case may be) are jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months.

[4/2017]

(6) A director is not liable under subsection (5) if the director proves that the default in the repayment of the money was not due to any misconduct or negligence on the part of the director.

[4/2017]

(7) An allotment made by a company or a trustee-manager of a business trust to an applicant in contravention of this section is voidable at the option of the applicant, which option may be exercised by written notice served —

(a) if the allotment is made by a company, on the company —

- (i) within one month after the holding of the statutory meeting of the company; or
- (ii) where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment; or

- (b) if the allotment is made by a trustee-manager of a business trust, on the trustee-manager of the business trust within one month after the date of the allotment.

[4/2017]

(7A) The allotment mentioned in subsection (7) is voidable even if the company or business trust is in the course of being wound up.

[4/2017]

(7B) A trustee-manager of a business trust which contravenes any of the provisions of this section shall be guilty of an offence and shall be liable, in addition to the penalty or punishment for the offence —

- (a) to pay into the trust property of the business trust any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property of the business trust) has sustained or incurred as a consequence of such contravention; and

- (b) to compensate the allottee for any loss, damages or costs which the allottee has sustained or incurred as a consequence of such contravention.

[4/2017]

(7C) Every director of a trustee-manager of a business trust who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence and shall be liable, in addition to the penalty or punishment for the offence —

- (a) to pay into the trust property of the business trust any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property of the business trust) has sustained or incurred as a consequence of such contravention; and

- (b) to compensate the allottee for any loss, damages or costs which the allottee has sustained or incurred as a consequence of such contravention.

[4/2017]

(7D) Every director of a company who knowingly contravenes or permits or authorises the contravention of any of the provisions of this

section shall be guilty of an offence and shall be liable, in addition to the penalty or punishment for the offence —

- (a) to compensate the company for any loss, damages or costs which the company has sustained or incurred as a consequence of such contravention; and
- (b) to compensate the allottee for any loss, damages or costs which the allottee has sustained or incurred as a consequence of such contravention.

[4/2017]

(8) No proceedings for the recovery of any compensation under subsection (7) may be commenced after the expiration of 2 years from the date of the allotment.

(9) Any condition requiring or binding any applicant for securities or securities-based derivatives contracts to waive compliance with any requirement of this section is void.

[4/2017]

### *Subdivision (3) — Debentures*

#### **Preliminary provisions**

**261.**—(1) Subject to subsection (1A), this Subdivision applies where an entity makes an offer of debentures.

(1A) Sections 268, 269 and 270 do not apply if the borrowing entity is a prescribed entity.

(1B) In subsections (1A) and (1C), “prescribed entity” means —

- (a) any bank licensed under the Banking Act 1970; or
- (b) any entity or entity of a class which has been declared by the Authority, by order in the *Gazette*, to be a prescribed entity for the purposes of this section.

(1C) The Authority may, by written notice —

- (a) impose such conditions or restrictions on a prescribed entity as it thinks fit; and

- (b) at any time vary or revoke any condition or restriction so imposed,

and the prescribed entity must comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

(1D) Any person who contravenes any condition or restriction imposed under subsection (1C)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(2) [*Deleted by Act 1 of 2005*]

(3) In this Subdivision, a corporation is related to another corporation if it is deemed to be related to that other corporation by virtue of section 6 of the Companies Act 1967.

### **Offer of asset-backed securities**

**262.**—(1) An offer of asset-backed securities is made only if they are issued by —

- (a) a special purpose vehicle other than a trust; or  
(b) the trustee of a trust that is a special purpose vehicle.

(2) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as the Authority may determine.

(3) In this section —

“asset-backed securities” means debentures or units of debentures issued pursuant to a securitisation transaction;

“securitisation transaction” means an arrangement that involves the sale, transfer or assignment of assets to a special purpose vehicle where —

- (a) such sale, transfer or assignment is funded by the issue of debentures or units of debentures (whether

by that special purpose vehicle or another special purpose vehicle); and

- (b) payments in respect of such debentures or units of debentures are or will be principally derived, directly or indirectly, from the cash flows generated by the assets;

“special purpose vehicle” means an entity that is established solely in order to, or a trust that is established solely in order for its trustee to, do either or both of the following:

- (a) hold (whether as a legal or equitable owner) the assets from which payments to holders of any asset-backed securities are or will be primarily derived;
- (b) issue any asset-backed securities.

**263.** [*Repealed by Act 16 of 2003*]

**264.** [*Repealed by Act 16 of 2003*]

### **Power of court in relation to certain irredeemable debentures**

**265.**—(1) Despite anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency is, if the court so orders, enforceable, immediately or at such other time as the court directs if, on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of any holder of the debentures, the court is satisfied that —

- (a) at the time of the issue of the debentures the assets of the borrowing entity which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking *pari passu*, if any); and



- (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing entity is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing entity and creditors.

### **Requirement for trustees**

**265A.**—(1) Where an offer of debentures is made in or accompanied by a prospectus, the borrowing entity must appoint a trustee for the holders of debentures (called in this section the appointed trustee) for the entire tenure of the debentures.

[34/2012]

(2) The borrowing entity must ensure that —

- (a) where the debentures are asset-backed securities or structured notes, the appointed trustee is any of the following persons:
- (i) a holder of a trust business licence under the Trust Companies Act 2005 that is carrying on business in Singapore in that capacity;
  - (ii) a bank licensed under the Banking Act 1970 that is carrying on business in Singapore in that capacity;
  - (iii) an approved trustee referred to in section 289 that is carrying on business in Singapore in that capacity;
  - (iv) such other person as the Authority may prescribe by regulations made under section 341;
- (b) where the debentures are not asset-backed securities or structured notes, the appointed trustee is any of the following persons:

- (i) a holder of a trust business licence under the Trust Companies Act 2005 that is carrying on business in Singapore in that capacity;
  - (ii) a bank licensed under the Banking Act 1970 that is carrying on business in Singapore in that capacity;
  - (iii) an approved trustee referred to in section 289 that is carrying on business in Singapore in that capacity;
  - (iv) any other person whom the borrowing entity is satisfied, on reasonable grounds, is, and will be, able to take timely and appropriate action on behalf of the holders of debentures, in the event of a default or as required by the trust deed;
  - (v) such other person as the Authority may prescribe by regulations made under section 341;
- (c) the appointed trustee is independent of the borrowing entity, guarantor entity, arranger and counterparty of the debentures; and
- (d) the appointed trustee meets such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(3) For the purposes of subsection (2)(b)(iv), the borrowing entity must, before being satisfied that a person is, and will be, able to take timely and appropriate action on behalf of the holders of debentures, in the event of a default or as required by the trust deed, consider the following matters:

- (a) whether the person is licensed or regulated in the jurisdiction —
  - (i) in which the person was incorporated or formed; or
  - (ii) of the person's principal place of business;
- (b) the contractual arrangements between the borrowing entity and the person;
- (c) whether, if the person is the appointed trustee, the duties which will be imposed on the person by way of the trust

deed, or under the laws and practices of the jurisdiction referred to in paragraph (a), are at least equivalent to those imposed under section 266(1);

- (d) such other matters as the Authority may prescribe by regulations made under section 341.

[34/2012]

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

- (5) In this section —

“asset-backed securities” has the meaning given by section 262(3);

“structured notes” has the meaning given by section 240AA(5).

[34/2012]

## **Duties of trustees**

**266.**—(1) A trustee for the holders of debentures must —

- (a) at all times exercise due diligence and vigilance in carrying out its functions and duties, and in safeguarding the rights and interests of the holders of debentures;
- (b) ensure that it has the ability and powers to perform all of its duties as set out in the trust deed;
- (c) ensure that any trustee appointed for the holders of any collateral upon which the debentures are secured is subject to duties that are at least equivalent to those imposed under paragraphs (a) and (b); and
- (d) comply with such other requirements as the Authority may prescribe by regulations made under section 341, or as the Authority may impose in respect of any particular offer or transaction relating to the debentures.

[34/2012]

(2) Where, after due inquiry, the trustee for the holders of debentures at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities which are or should be available whether by way of security or otherwise, are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Authority for an order under this subsection.

(3) The Authority, on such application —

- (a) after giving the borrowing entity an opportunity of making representations in relation to that application, by written order served on the entity at its registered office in Singapore, may impose such restrictions on the activities of the borrowing entity, including restrictions on advertising for deposits or loans and on borrowing by the entity as the Authority thinks necessary for the protection of the interests of the holders of the debentures; or
- (b) may, and if the borrowing entity so requires, must direct the trustee to apply to the court for an order under subsection (5); and the trustee must apply accordingly.

(4) Where —

- (a) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing entity and of any of its guarantor entities which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or
- (b) the borrowing entity has contravened an order made by the Authority under subsection (2),

the trustee may, and where the borrowing entity has requested the trustee to do so, must apply to the court for an order under subsection (5).

(5) Where an application is made to the court under subsection (3) or (4), the court may, after giving the borrowing entity an opportunity to be heard, by order, do all or any of the following things:

- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate, and of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the court thinks fit;
- (b) stay all or any actions or proceedings before any court by or against the borrowing entity;
- (c) restrain the payment of any moneys by the borrowing entity to the holders of debentures of the borrowing entity or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security (if any) for the debentures;
- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing entity or any of its guarantor entities or the public,

but in making any such order the court must have regard to the rights of all creditors of the borrowing entity.

(6) The court may vary or rescind any order made under subsection (5) as the court thinks fit.

(7) A trustee in making any application to the Authority or to the court must have regard to the nature and kind of the security given when the offer of the debentures was made, and if no security was given must have regard to the position of the holders of the debentures as unsecured creditors of the borrowing entity.

(8) A trustee may rely upon any certificate or report given or statement made by any advocate and solicitor, auditor or officer of the borrowing entity or guarantor entity if it has reasonable grounds for believing that such advocate and solicitor, auditor or officer was competent to give or make the certificate, report or statement.

**Powers of trustee to apply to court for directions, etc.**

**267.**—(1) A trustee for the holders of debentures may apply to the court —

- (a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or
- (b) to determine any question in relation to the interests of the holders of debentures.

(2) The court may —

- (a) give such directions to the trustee as the court thinks fit; and
- (b) if satisfied that the determination of the question will be just and beneficial, accede wholly or partially to any such application on such terms and conditions as the court thinks fit or make such other order on the application as the court thinks just.

(3) The court may, on an application under this section, order a meeting of all or any of the holders of debentures to be called to consider any matters in which they are concerned and to advise the trustee on those matters and may give such ancillary or consequential directions as the court thinks fit.

(4) The meeting must be held and conducted in such manner as the court directs, by a chairperson nominated by the trustee or such other person as the meeting appoints.

**Right of Authority, approved exchange and holders of debentures to apply to court for order**

**267A.** Without affecting any other right of action or remedy in any written law or rule of law, a holder of debentures, the Authority or an approved exchange (in a case where the debentures are quoted or listed for quotation on that approved exchange) may apply to the court for an order to compel the trustee for the holders of such debentures to perform the trustee's duties as set out in the trust deed relating to those debentures, and the court may either make the order on such terms as it considers appropriate, or dismiss the application.

[4/2017]

**Obligations of borrowing entity**

**268.**—(1) [*Deleted by Act 34 of 2012*]

(2) [*Deleted by Act 34 of 2012*]

(3) [*Deleted by Act 34 of 2012*]

(4) Where there is a trustee for the holders of any debentures issued by a borrowing entity, the borrowing entity and each of its guarantor entities which has guaranteed the repayment of the moneys raised by the issue of those debentures must, whether or not any demand therefor has been made —

(a) in writing provide the trustee, within 21 days after the creation of the charge, with the particulars of any charge created by the entity or the guarantor entity, as the case requires; and

(b) when the amount to be advanced on the security of the charge is indeterminate, in writing provide the trustee, within 7 days after the advance, with particulars of the amount or amounts in fact advanced.

(5) Where any such advance referred to in subsection (4)(b) is merged in a current account with bankers or trade creditors, it is sufficient for particulars of the net amount outstanding in respect of any such advance to be provided every 3 months.

(6) The directors or equivalent persons of every borrowing entity and of every guarantor entity must cause to be made out and lodged with the trustee for the holders of the debentures, if any —

(a) a profit and loss account for the first 6 months of every financial year of the entity and a balance sheet as at the end of that period, not later than 3 months after the expiration of the period of 6 months; and

(b) a profit and loss account for every financial year of the entity and a balance sheet as at the end of that period, not later than 5 months after the expiration of that financial year.

[34/2012]

(6A) Any person who provides any information contained in a profit and loss account or balance sheet required under subsection (6) must use due care to ensure that the information is not false or misleading in any material particular.

[34/2012]

(7) Any person who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues after conviction.

(7A) Any person who contravenes subsection (6A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[34/2012]

(8) Sections 201(8), (9), (10), (12), (13), (14), (15) and (16) and 207(1), (2) and (7) of the Companies Act 1967 are, with such adaptations as are necessary, applicable to every profit and loss account and balance sheet made out and lodged under subsection (6) as if that profit and loss account and balance sheet were financial statements referred to in those sections.

[35/2014]

(9) Where the directors or equivalent persons of a borrowing entity, or the directors or equivalent persons of a guarantor entity, do not lodge with the trustee the profit and loss accounts and balance sheets as required under subsection (6) within the time prescribed under that subsection, the trustee must immediately lodge notice of that fact with the Authority.

[34/2012]

(10) Despite anything in subsection (8) —

- (a) a profit and loss account and balance sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6)(a) need not be audited; and
- (b) a profit and loss account and balance sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6)(b) need not be



audited, or the audit thereof may be of a limited nature or extent, if the trustee for the holders of the debentures of the borrowing entity has, by written notice, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

[2/2009]

(11) Where the trustee has by written notice given the trustee's consent under subsection (10), the directors or equivalent persons of the borrowing entity, or the directors or equivalent persons of the guarantor entity, in respect of whose profit and loss account and balance sheet the notice was given, must lodge with the Authority a copy of the notice at the time when the profit and loss account and balance sheet to which the notice relates are lodged with the Authority.

(12) Despite anything in this section, a profit and loss account and balance sheet of a borrowing entity or its guarantor entity required to be made out and lodged in accordance with subsection (6) may, unless the trustee for the holders of the debentures of the borrowing entity otherwise requires in writing, be based upon the value of the stock in trade of the borrowing entity or the guarantor entity (as the case may be) as reasonably estimated by the directors or equivalent persons of the borrowing entity or guarantor entity.

(13) The estimation of the directors or equivalent persons referred to in subsection (12) must be made on the basis of the values of such stock in trade as adopted for the purpose of the profit and loss account and balance sheet of that entity laid before the entity at its last preceding annual general meeting and certified in writing by the directors or equivalent persons as such.

### **Additional obligations of borrowing entity, where debentures are not listed on approved exchange**

**268A.**—(1) A borrowing entity that issues any debentures which are not listed on an approved exchange (called in this section unlisted debentures) must, if the unlisted debentures have a tenure of 12 months or longer, prepare and make available to the holders of the debentures, in respect of the period of 6 months beginning on the date of issuance of the debentures and each subsequent period of

6 months, a report covering the period of 6 months (called in this section a semi-annual report), in accordance with this section and such other requirements as the Authority may prescribe by regulations made under section 341.

[34/2012; 4/2017]

(2) The borrowing entity must ensure that each semi-annual report covering a period of 6 months is lodged with the trustee for the holders of the unlisted debentures, not later than 2 months after the end of that period.

[34/2012]

(3) Where the borrowing entity does not lodge with the trustee for the holders of unlisted debentures a semi-annual report as required under subsection (2), the trustee must immediately lodge notice of that fact with the Authority.

[34/2012]

(4) A borrowing entity must immediately disclose, in such form and manner as the Authority may prescribe by regulations made under section 341, to holders of unlisted debentures any information which may materially affect —

- (a) the risks and returns of the unlisted debentures; or
- (b) the price or value of the unlisted debentures.

[34/2012]

(5) Any person who contravenes subsection (1), (2) or (4) 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 not exceeding \$2,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(6) Where the terms of any unlisted debentures provide for redemption at the option of the holder of the unlisted debentures, the borrowing entity must —

- (a) make available bid or redemption prices of the unlisted debentures, at the frequency at which the borrowing entity has committed to buying back the unlisted debentures or once every fortnight, whichever is more frequent, in such

form and manner as the Authority may prescribe by regulations made under section 341;

- (b) if the published bid prices are indicative and may not be the actual bid prices, clearly state this fact, wherever the published bid prices appear, in such form and manner as the Authority may prescribe by regulations made under section 341; and
- (c) ensure that the bid or redemption prices are determined in an independent and fair manner.

*[34/2012]*

(7) A borrowing entity must ensure that each profit and loss account or balance sheet that its directors or equivalent persons are required to lodge under section 268(6) is made available, in such form and manner as the Authority may prescribe by regulations made under section 341, to holders of unlisted debentures, on the day of lodgment of the profit and loss account or balance sheet (as the case may be) with the trustee for the holders of the unlisted debentures.

*[34/2012]*

(8) Any person who contravenes subsection (6) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues after conviction.

*[34/2012]*

(9) Any person who provides any information contained in a semi-annual report required under subsection (2) must use due care to ensure that the information is not false or misleading in any material particular.

*[34/2012]*

(10) Any person who contravenes subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

*[34/2012]*

**Obligation of guarantor entity to provide information**

**269.**—(1) For the purpose of the preparation of a report that, by this Subdivision, is required to be signed by or on behalf of the directors or equivalent persons, or persons approved by the Authority, of a borrowing entity or any of them, that borrowing entity may, by written notice, require any of its guarantor entities to provide it with any information relating to that guarantor entity which is, by this Subdivision, required to be contained in that report.

(2) The guarantor entity must provide the borrowing entity with the information required under subsection (1) before such date, being a date not earlier than 14 days after the notice is given, as may be specified in that behalf in the notice.

(3) A guarantor entity which fails to comply with a requirement contained in a notice given under subsection (1) and every officer or equivalent person of that entity who is in default 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 not exceeding \$2,000 for every day or part of a day during which the offence continues after conviction.

**Loans and deposits to be immediately repayable on certain events**

**270.**—(1) Where there is, in any prospectus issued in connection with an offer of debentures, a statement as to any particular purpose or project for which the moneys received by the borrowing entity in response to the offer are to be applied, the borrowing entity must, where there is a trustee for the holders of those debentures, from time to time make reports to the trustee as to the progress that has been made towards achieving such purpose or completing such project.

(2) Each such report must be included in the report required to be provided to the trustee for the holders of the debentures under section 268(1).

(3) When it appears to the trustee for the holders of the debentures that such purpose or project has not been achieved or completed —

(a) within the time stated in the prospectus within which the purpose or project is to be achieved or completed; or

(b) where no such time was stated, within a reasonable time, the trustee may and, if in the trustee's opinion it is necessary for the protection of the interests of the holders of the debentures, must give written notice to the borrowing entity requiring it to repay the moneys so received by the borrowing entity and, within one month after such notice is given, lodge with the Authority a copy thereof.

(4) The trustee must not give notice under subsection (3) if the trustee is satisfied —

(a) that the purpose or project has been substantially achieved or completed;

(b) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or

(c) that the failure to achieve the purpose or project was due to circumstances beyond the control of the borrowing entity that could not reasonably have been foreseen by the borrowing entity at the time that the prospectus was issued.

(5) Upon receipt by the borrowing entity of a notice referred to in subsection (3), the borrowing entity is liable to repay, and on demand in writing by a person entitled thereto must immediately repay to the person any moneys owing to the person as the result of a loan or deposit made in response to the offer unless —

(a) before the moneys were accepted by the borrowing entity, the borrowing entity had given written notice to the persons from whom the moneys were received specifying the purpose or project for which the moneys would in fact be used and the moneys were accepted by the borrowing entity accordingly; or

(b) the borrowing entity by written notice served on the holders of the debentures —

- (i) had specified the purpose or project for which the moneys would in fact be applied by the borrowing entity; and
- (ii) had offered to repay the moneys to the holders of the debentures, and that person had not within 14 days after the receipt of the notice, or such longer time as was specified in the notice, in writing demanded from the borrowing entity repayment of the money.

(6) Where the borrowing entity has given written notice as provided in subsection (5), specifying the purpose or project for which the moneys will in fact be applied by the borrowing entity, this section applies and has effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

### **Liability of trustees for debenture holders**

**271.**—(1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, is void insofar as it would have the effect of exempting a trustee thereof from or indemnifying the trustee against liability for breach of trust where the trustee fails to show the degree of care and diligence required as trustee.

(2) Subsection (1) does not invalidate —

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given —
  - (i) on the agreement thereto of a majority of not less than three fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

- (ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on the trustee's ceasing to act.

(3) Subsection (1) does not operate —

- (a) to invalidate any provision in force on 29 December 1967 so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or
- (b) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

*Subdivision (4) — Exemptions*

**Issue or transfer of securities or securities-based derivatives contracts for no consideration**

**272.**—(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities being shares or debentures of an entity, or units in a business trust, if no consideration is or will be given for the issue or transfer of the shares or debentures, or units in a business trust (as the case may be).

[4/2017]

(2) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities-based derivatives contracts being units of shares or debentures of an entity, or derivatives of units in a business trust, if —

- (a) no consideration is or will be given for the issue or transfer of the units of shares or debentures of the entity, or derivatives of units in the business trust; and
- (b) no consideration is or will be given for the underlying shares or debentures of the entity, or units in the business trust (as the case may be) on the exercise or conversion of the units of shares or debentures of the entity, or derivatives of units in the business trust (as the case may be).

[4/2017]

**Small offers**

**272A.**—(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to personal offers of securities or securities-based derivatives contracts of an entity or a business trust by a person if —

(a) the total amount raised by the person from such offers within any period of 12 months does not exceed —

(i) \$5 million (or its equivalent in a foreign currency); or

(ii) such other amount as the Authority may prescribe in substitution for the amount specified in sub-paragraph (i);

(b) in respect of each offer, the person making the offer gives the person to whom the offer is made —

(i) a statement in writing that states —

(A) where units or derivatives of units in a business trust are being offered and the business trust is not registered under the Business Trusts Act 2004 —

“This offer is made in reliance on the exemption under section 272A(1) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust is not registered under the Business Trusts Act 2004.”; and

(B) in any other case —

“This offer is made in reliance on the exemption under section 272A(1) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”; and



- (ii) a notification in writing that the securities or securities-based derivatives contracts to which the offer (called in this sub-paragraph the initial offer) relates must not be subsequently sold to any person, unless the offer resulting in such subsequent sale is made —
  - (A) in compliance with Subdivisions (2) and (3) of this Division;
  - (B) in reliance on subsection (8)(c) or any other exemption under any provision of this Subdivision (other than this subsection); or
  - (C) where at least 6 months have elapsed from the date the securities or securities-based derivatives contracts were acquired under the initial offer, in reliance on the exemption under this subsection;
- (c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;
- (d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
  - (i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;
  - (ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or
  - (iii) a person —
    - (A) who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets

products that are securities or securities-based derivatives contracts; or

(B) who is exempted from the laws, codes or requirements mentioned in sub-paragraph (A) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and

(e) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

(i) the prospectus has expired pursuant to section 250; or

(ii) the person making the offer has before making the offer informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(2) For the purposes of subsection (1)(b), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom the offer is made in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of securities or securities-based derivatives contracts is one that —

(a) may be accepted only by the person to whom it is made; and

(b) is made to a person who is likely to be interested in that offer, having regard to —

(i) any previous contact before the date of the offer between the person making the offer and that person;

- (ii) any previous professional or other connection established before that date between the person making the offer and that person; or
- (iii) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to any of the following persons that that person is interested in offers of that kind:
  - (A) the person making the offer;
  - (B) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;
  - (C) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;
  - (D) a person licensed under the Financial Advisers Act 2001 in respect of the provision of financial advisory services concerning investment products;
  - (E) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act 2001;
  - (F) a person —
    - (FA) who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;
    - (FB) who is exempted from the laws, codes or requirements mentioned in sub-paragraph (FA) in respect of dealing in capital markets products

that are securities or securities-based derivatives contracts;

(FC) who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of the provision of financial advisory services concerning investment products; or

(FD) who is exempted from the laws, codes or requirements mentioned in sub-paragraph (FC) in respect of the provision of financial advisory services concerning investment products.

[4/2017]

(4) In determining the amount raised by an offer, the following must be included:

(a) the amount payable for the securities or securities-based derivatives contracts at the time they are allotted, issued or sold;

(b) if the securities or securities-based derivatives contracts are issued partly-paid, any amount payable at a future time if a call is made;

(c) if the securities or securities-based derivatives contracts carry a right (by whatever name called) to be converted into other securities or securities-based derivatives contracts or to acquire other securities or securities-based derivatives contracts, any amount payable on the exercise of the right to convert them into, or to acquire, other securities or securities-based derivatives contracts.

[4/2017]

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount mentioned in subsection (1)(a), each amount raised —

- (a) by that person from any offer of securities or securities-based derivatives contracts issued by the same entity; or
- (b) by that person or another person from any offer of securities or securities-based derivatives contracts of an entity or a business trust, or units in a collective investment scheme, which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1) or section 302B(1) must be included.

[4/2017]

(6) Whether an offer is a closely related offer under subsection (5) is determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of securities or securities-based derivatives contracts made by a person acting as an agent of another person is treated as an offer made by that other person.

[4/2017]

(8) Where securities or securities-based derivatives contracts acquired through an offer made in reliance on the exemption under subsection (1) (called in this subsection an initial offer) are subsequently sold by the person who acquired the securities or securities-based derivatives contracts to another person, Subdivisions (2) and (3) of this Division apply to the offer from the firstmentioned person to the second-mentioned person which resulted in that sale, unless —

- (a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);
- (b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the securities or securities-based derivatives contracts were acquired under the initial offer; or
- (c) such offer is one —
  - (i) that may be accepted only by the person to whom it is made;

- (ii) that is made to a person who is likely to be interested in the offer having regard to —
  - (A) any previous contact before the date of the offer between the person making the initial offer and that person;
  - (B) any previous professional or other connection established before that date between the person making the initial offer and that person; or
  - (C) any previous indication (whether through statements made or actions carried out) before that date by that person that indicate to any of the following persons that that person is interested in offers of that kind:
    - (CA) the person making the initial offer;
    - (CB) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;
    - (CC) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;
    - (CD) a person licensed under the Financial Advisers Act 2001 in respect of the provision of financial advisory services concerning investment products;
    - (CE) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act 2001;
    - (CF) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that

- are securities or securities-based derivatives contracts;
- (CG) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (CF) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;
  - (CH) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of the provision of financial advisory services concerning investment products;
  - (CI) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (CH) in respect of the provision of financial advisory services concerning investment products;
- (iii) in respect of which the firstmentioned person has given the second-mentioned person —
- (A) a statement in writing that states —
    - (AA) where units or derivatives of units in a business trust are being offered and the business trust is not registered under the Business Trusts Act 2004 —

“This offer is made in reliance on the exemption under section 272A(8)(c) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the business trust

is not registered under the Business Trusts Act 2004.”; and

(AB) in any other case —

“This offer is made in reliance on the exemption under section 272A(8)(c) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”;

(B) a notification in writing that the securities or securities-based derivatives contracts being offered must not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivisions (2) and (3) of this Division;

(BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or

(BC) where at least 6 months have elapsed from the date the securities or securities-based derivatives contracts were acquired under the initial offer, in reliance on the exemption under subsection (1);

(iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and

(v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative



or professional services, or by way of commission or fee for services rendered by —

- (A) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;
- (B) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;
- (C) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or
- (D) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (C) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts.

[4/2017]

(9) Subsection (2) applies, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(c)(iii).

(10) In subsections (1)(c) and (8)(c)(iv), “advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message,

that is published in connection with an offer of securities or securities-based derivatives contracts, but does not include —

- (d) a document —
- (i) purporting to describe the securities or securities-based derivatives contracts being offered, or the business and affairs of the person making the offer, the issuer or (where applicable) the underlying entity, or (where the securities or securities-based derivatives contracts being offered are units or derivatives of units in a business trust) the business trust; and
  - (ii) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the securities or securities-based derivatives contracts being offered;
- (e) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or
- (f) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the person making the offer, the issuer, the unitholders of the business trust, the underlying entity or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting.

[2/2009; 4/2017]

(11) In subsection (10)(d)(i), the reference to the affairs of the person making the offer, the issuer, the underlying entity or the business trust includes —

- (a) in the case where the person making the offer, the issuer or the underlying entity is a corporation, a reference to the matters mentioned in section 2(2);
- (b) in any other case, a reference to such matters as may be prescribed by regulations made under section 341.

[4/2017]

**Private placement**

**272B.**—(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to offers of securities or securities-based derivatives contracts of an entity or of a business trust that are made by a person if —

- (a) the offers are made to no more than 50 persons within any period of 12 months;
- (b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;
- (c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
  - (i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;
  - (ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;
  - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or
  - (iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and
- (d) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —

- (i) the prospectus has expired pursuant to section 250;  
or
- (ii) the person making the offer has before making the offer —
  - (A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and
  - (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(a).

(3) In determining whether offers of securities or securities-based derivatives contracts by a person are made to no more than the applicable number of persons specified in subsection (1)(a) within a period of 12 months, the following persons must be included:

- (a) each person to whom an offer of securities or securities-based derivatives contracts issued by the same entity is made by the firstmentioned person within that period in reliance on the exemption under this section;
- (b) each person to whom an offer of securities or securities-based derivatives contracts of an entity or a business trust, or units in a collective investment scheme, is made by the firstmentioned person or another person where such offer is a closely related offer, within that period in reliance on the exemption under this section or section 302C.

[4/2017]

(4) Whether an offer is a closely related offer under subsection (3) is determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

- (a) an offer of securities or securities-based derivatives contracts to an entity or to a trustee is treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the securities or securities-based derivatives contracts which are the subject of the offer;
- (b) an offer of securities or securities-based derivatives contracts to an entity or to a trustee is treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust (as the case may be) if the entity or trust is formed primarily for the purpose of acquiring the securities or securities-based derivatives contracts which are the subject of the offer;
- (c) an offer of securities or securities-based derivatives contracts to 2 or more persons who will own the securities or securities-based derivatives contracts acquired as joint owners is treated as an offer to a single person;
- (d) an offer of securities or securities-based derivatives contracts to a person acting on behalf of another person (whether as an agent or otherwise) is treated as an offer made to that other person;
- (e) offers of securities or securities-based derivatives contracts made by a person as an agent of another person is treated as offers made by that other person;
- (f) where an offer is made to a person with a view to another person acquiring an interest in those securities or securities-based derivatives contracts by virtue of section 4, only the second-mentioned person is counted for the purposes of determining whether offers of the securities or securities-based derivatives contracts are made to no more than the applicable number of persons specified in subsection (1)(a); and

(g) where —

(i) an offer of securities or securities-based derivatives contracts is made to a person in reliance on the exemption under subsection (1) with a view to those securities or securities-based derivatives contracts being subsequently offered for sale to another person; and

(ii) that subsequent offer —

(A) is not made in reliance on an exemption under any provision of this Subdivision; or

(B) is made in reliance on an exemption under subsection (1) or section 280,

both persons are counted for the purposes of determining whether offers of the securities or securities-based derivatives contracts are made to no more than the applicable number of persons specified in subsection (1)(a).

[4/2017]

(6) In subsection (1)(b), “advertisement” has the meaning given by section 272A(10).

### **Offer made under certain circumstances**

**273.**—(1) Subject to subsection (5), Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts if —

(a) it is made in connection with a take-over offer which is in compliance with the Take-over Code;

(b) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in an unlisted corporation or some or all of the shares of a particular class in an unlisted corporation —

(i) to all members of the corporation or all members of the corporation holding shares of that class; or

- (ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

where such offer is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs of the country in which the corporation was incorporated;

- (c) it is made in connection with a proposed compromise or arrangement between —
  - (i) an unlisted corporation and its creditors or a class of them; or
  - (ii) an unlisted corporation and its members or a class of them,

and such proposed compromise or arrangement and the execution thereof is in compliance with the laws, codes and other requirements (whether or not having the force of law) relating to take-overs, compromises and arrangements of the country in which the corporation was incorporated;

- (ca) it is made in connection with an offer for the acquisition by or on behalf of a person of some or all of the shares in a corporation or some or all of the shares of a particular class in a corporation —
  - (i) to all members of the corporation or all members of the corporation holding shares of that class; or
  - (ii) where the person already holds shares in the corporation, to all other members of the corporation or all other members of the corporation holding shares of that class,

and such offer complies with the Take-over Code as though the Take-over Code is applicable to it;

- (cb) it is made in connection with a proposed compromise or arrangement between —
  - (i) a corporation and its creditors or a class of them; or

- (ii) a corporation and its members or a class of them, and such proposed compromise or arrangement and the execution thereof complies with the Take-over Code as though the Take-over Code is applicable to it;
- (cc) it is an offer to enter into an underwriting agreement relating to securities or securities-based derivatives contracts;
- (cd) it is an offer of securities or securities-based derivatives contracts of an entity —
  - (i) being an entity which is formed or constituted in Singapore or otherwise, whose securities or securities-based derivatives contracts are not listed for quotation on an approved exchange; or
  - (ii) being an entity which is not formed or constituted in Singapore, whose securities or securities-based derivatives contracts are listed for quotation on an approved exchange and such listing is not a primary listing,  
that is made to existing members or debenture holders of that entity (whether or not it is renounceable in favour of persons other than existing members or debenture holders);
- (ce) it is an offer of shares or debentures of an entity made to any existing member or debenture holder of the entity whose shares are listed for quotation on an approved exchange;
- (cf) it is an offer of debentures of an entity made to any existing debenture holder of the entity whose debentures are listed for quotation on an approved exchange;
- (cg) it is an offer of units of shares or debentures of an entity made to any existing member or debenture holder of the entity whose shares are listed for quotation on an approved exchange, where such units may only be exercised or converted by any existing member or debenture holder into shares or debentures (as the case may be) of the entity;



- (ch) it is an offer of units of debentures of an entity made to any existing debenture holder of the entity whose debentures are listed on an approved exchange, where such units may only be exercised or converted by any existing debenture holder into debentures of the entity;
- (ci) it is an offer of securities or securities-based derivatives contracts of a corporation made in the circumstances specified under section 178 of the Insolvency, Restructuring and Dissolution Act 2018;
- (cj) it is an offer of units in a business trust, whose units are listed for quotation on an approved exchange, made to —
  - (i) any existing unitholder of the business trust; or
  - (ii) any holder of any debenture of the trustee-manager of the business trust that is issued by the trustee-manager of the business trust in its capacity as trustee-manager of the business trust;
- (ck) it is an offer of derivatives of units in a business trust, whose units are listed for quotation on an approved exchange, made to —
  - (i) any existing unitholder of the business trust, where such derivatives of units may only be exercised or converted by the existing unitholder into units of the business trust; or
  - (ii) any holder of any debenture of the trustee-manager of the business trust that is issued by the trustee-manager of the business trust in its capacity as trustee-manager of the business trust, where such derivatives of units may only be exercised or converted by the holder of debentures into units of the business trust;
- (d) it is an offer of shares or debentures (not being such excluded shares or excluded debentures as the Authority may prescribe) that have been previously issued, are listed for quotation or quoted on an approved exchange, and are traded on the exchange;

- (da) it is an offer of units in a business trust (not being such excluded units in a business trust as may be prescribed by regulations made under section 341) that —
- (i) have been previously issued;
  - (ii) are listed for quotation or quoted on an approved exchange; and
  - (iii) are traded on the approved exchange;
- (e) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) that —
- (i) have been previously issued;
  - (ii) are listed for quotation or quoted on an approved exchange; and
  - (iii) are traded on the approved exchange;
- (f) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) where —
- (i) the discharge of the obligations under, or the value of, the securities-based derivatives contracts is determined wholly (whether directly or indirectly) by reference to, is derived from, or varies by reference to the value or amount of one or more securities indices; and
  - (ii) an application has been or will be made for permission for the securities-based derivatives contracts to be listed for quotation or quoted on an approved exchange;
- (g) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) where —

- (i) the obligations under the securities-based derivatives contracts are to be discharged by one party to the other at some future time by cash settlement only;
  - (ii) all underlying securities of the securities-based derivatives contracts have been previously issued and are listed for quotation on an organised market (not being such excluded organised market as may be prescribed by regulations made under section 341); and
  - (iii) either of the following is satisfied:
    - (A) an application has been or will be made for permission for the securities-based derivatives contracts to be listed for quotation or quoted on an approved exchange;
    - (B) the offer complies with such disclosure requirements prescribed by regulations made under section 341;
- (h) it is an offer of securities-based derivatives contracts (not being such excluded securities-based derivatives contracts as may be prescribed by regulations made under section 341) where —
- (i) the obligations under the securities-based derivatives contracts are to be discharged by one party to the other at some future time other than by cash settlement only;
  - (ii) all underlying securities of the securities-based derivatives contracts have been previously issued and are listed for quotation on an approved exchange or a recognised securities exchange; and
  - (iii) an application has been or will be made for permission for the securities-based derivatives contracts to be listed for quotation or quoted on an approved exchange;

- (i) it is made (whether or not in relation to securities or securities-based derivatives contracts that have been previously issued) by an entity to a qualifying person, where the securities or securities-based derivatives contracts are to be held by or for the benefit of the qualifying person and are the securities or securities-based derivatives contracts of the entity or any of its related parties; or
- (j) it is made (whether or not in relation to securities or securities-based derivatives contracts that have been previously issued) by a trustee-manager of a business trust to a qualifying person, where the securities or securities-based derivatives contracts are to be held by or for the benefit of the qualifying person and are the securities or securities-based derivatives contracts of the business trust or any of its related parties.

[2/2009; 4/2017; 40/2018]

(1A) An offer of securities or securities-based derivatives contracts does not come within subsection (1)(d), (da) or (e) if —

- (a) the securities or securities-based derivatives contracts being offered are borrowed by the issuer from any of the following persons solely for the purpose of facilitating the offer of securities or securities-based derivatives contracts by the issuer:
  - (i) an existing shareholder of the issuer;
  - (ii) a holder of a debenture of the issuer;
  - (iii) (where the securities or securities-based derivatives contracts offered are units or derivatives of units in a business trust) an existing holder of units or holder of derivatives of units in the business trust;
  - (iv) a holder of units of shares or debentures of the issuer;and
- (b) such borrowing is made under an agreement or arrangement between the issuer and the person mentioned in paragraph (a) which promises the issue or

allotment of securities or securities-based derivatives contracts by the issuer to the person at the same time or shortly after the offer.

[4/2017]

(2) An offer of securities or securities-based derivatives contracts comes within subsection (1)(i) or (j) only if no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred —

- (a) for administrative or professional services; or
- (b) by way of commission or fee for services rendered by —
  - (i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;
  - (ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;
  - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or
  - (iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts.

[4/2017]

(3) [Deleted by Act 1 of 2005]

(4) For the purposes of subsection (1)(i) and (j) —

- (a) a person is a qualifying person in relation to an entity if the person is —
  - (i) a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the entity or a

related corporation of that entity (being a corporation); or

- (ii) the spouse, widow, widower or a child, adopted child or stepchild below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee; and

(b) a person is a qualifying person in relation to a business trust if the person is —

- (i) a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the trustee-manager of the business trust or a related corporation of that trustee-manager (being a corporation); or
- (ii) the spouse, widow, widower or a child, adopted child or stepchild below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee.

[4/2017]

(5) Where, on the application of any person interested, the Authority declares that circumstances exist whereby —

- (a) the cost of providing a prospectus for an offer of securities or securities-based derivatives contracts outweighs the resulting protection to investors; or
- (b) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer of securities or securities-based derivatives contracts,

then Subdivisions (2) and (3) of this Division (other than section 257) do not apply to such an offer for a period of 6 months from the date of the declaration.

[4/2017]

(6) The Authority may, on making a declaration under subsection (5), impose such conditions or restrictions on the offer as it may determine.

(7) A declaration made under subsection (5) is final.

(8) Any person who contravenes any of the conditions or restrictions specified in the declaration made under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(8A) A person must not —

(a) advertise an offer or intended offer of any securities or securities-based derivatives contracts mentioned in subsection (1)(d), (da) or (e); or

(b) publish a statement that —

(i) directly or indirectly, refers to an offer or intended offer of any securities or securities-based derivatives contracts mentioned in subsection (1)(d), (da) or (e); or

(ii) is reasonably likely to induce persons to subscribe for or purchase the securities or securities-based derivatives contracts to which the offer relates,

unless the advertisement or publication complies with such requirements as may be prescribed by regulations made under section 341.

[4/2017]

(8B) Any person who contravenes subsection (8A), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(9) In subsection (1)(b) and (c), “unlisted corporation” means a corporation —

(a) that is not a company; and

- (b) the shares or debentures, or units of shares or debentures, of which are not listed for quotation on any approved exchange.

[4/2017]

(10) In subsection (1)(ca) and (cb), “corporation” means a corporation that is not a company.

### **Offer made to institutional investors**

**274.** Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts (whether or not they have been previously issued) made to an institutional investor.

[4/2017]

### **Offer made to accredited investors and certain other persons**

**275.—**(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts, whether or not they have been previously issued, where the offer is made to a relevant person, if —

- (a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;
- (b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
  - (i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;
  - (ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;
  - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or



- (iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and
- (c) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —
  - (i) the prospectus has expired pursuant to section 250; or
  - (ii) the person making the offer has before making the offer —
    - (A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and
    - (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(1A) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts to a person who acquires the securities or securities-based derivatives contracts as principal, whether or not the securities or securities-based derivatives contracts have been previously issued, if —

- (a) the offer is on terms that the securities or securities-based derivatives contracts may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities, securities-based derivatives contracts or other assets;
- (b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

- (c) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by —
- (i) the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts;
  - (ii) an exempt person in respect of dealing in capital markets products that are securities or securities-based derivatives contracts;
  - (iii) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; or
  - (iv) a person who is exempt from the laws, codes or requirements mentioned in sub-paragraph (iii) in respect of dealing in capital markets products that are securities or securities-based derivatives contracts; and
- (d) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —
- (i) the prospectus has expired pursuant to section 250; or
  - (ii) the person making the offer has before making the offer —
    - (A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and
    - (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

(2) In this section —

“advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message,

that is published in connection with an offer in respect of securities or securities-based derivatives contracts, but does not include —

- (d) an information memorandum;
- (e) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or
- (f) a publication which consists solely of a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, the person making the offer, the issuer, the underlying entity or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting;

“information memorandum” means a document —

- (a) purporting to describe —
  - (i) the securities or securities-based derivatives contracts being offered; or
  - (ii) the business and affairs of the person making the offer, the issuer or (where applicable) the underlying entity, or (where the securities or securities-based derivatives contracts being offered are units or derivatives of units in a

business trust) the trustee-manager of the business trust or the business trust; and

- (b) purporting to have been prepared for delivery to, and review by, relevant persons and persons to whom an offer mentioned in subsection (1A) is to be made, so as to assist them in making an investment decision in respect of the securities or securities-based derivatives contracts being offered;

“relevant person” means —

- (a) an accredited investor;
- (b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;
- (c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;
- (d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or
- (e) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

[4/2017]

(2A) In the definition of “information memorandum” in subsection (2), the reference to the affairs of the person making the offer, the issuer, the underlying entity, the trustee-manager of the business trust or the business trust includes —

- (a) where the person making the offer, the issuer, the underlying entity or the trustee-manager is a corporation, a reference to the matters mentioned in section 2(2); and
- (b) in any other case, a reference to such matters as may be prescribed by regulations made under section 341.

[4/2017]

(3) Despite any condition in section 99 or any regulation made for the purposes of that section that a person has to deal in capital markets products that are securities or securities-based derivatives contracts for the person's own account with or through a person prescribed by the Authority so that the firstmentioned person can qualify as an exempt person, a person who acquires securities or securities-based derivatives contracts under an offer made in reliance on an exemption under section 274 or subsection (1) or (1A) for the person's own account is treated as an exempt person even though the person does not comply with that condition.

[4/2017]

(4) The Authority may, by order in the *Gazette*, specify an amount in substitution of any amount specified in subsection (1A)(a).

### **Offer of securities acquired pursuant to section 274 or 275**

**276.**—(1) Despite sections 272A, 272B, 273(1)(d), (e) and (f), 277, 278 and 279 but subject to subsection (7), where securities or securities-based derivatives contracts initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold within the period of 6 months from the date of the initial acquisition to any person other than —

- (a) an institutional investor;
- (b) a relevant person as defined in section 275(2); or
- (c) any person pursuant to an offer referred to in section 275(1A),

then Subdivisions (2) and (3) of this Division apply to the offer resulting in that sale.

[2/2009; 4/2017]

(1A) The reference to the sale of securities or securities-based derivatives contracts under subsection (1) includes —

- (a) where the securities or securities-based derivatives contracts initially acquired are debentures, or units of shares or debentures, with an attached right of conversion into shares or debentures, a reference to the sale of the converted shares or debentures; and

- (b) where the securities or securities-based derivatives contracts initially acquired are derivatives of units in a business trust, with an attached right of conversion into units in the business trust, a reference to the sale of the units in the business trust.

[4/2017]

(2) Where securities or securities-based derivatives contracts initially acquired pursuant to an offer made in reliance on an exemption under section 274 or 275 are sold to —

- (a) an institutional investor;
- (b) a relevant person as defined in section 275(2); or
- (c) any person pursuant to an offer referred to in section 275(1A),

Subdivisions (2) and (3) of this Division do not apply to the offer resulting in that sale.

[4/2017]

(3) Subject to subsection (7), securities or securities-based derivatives contracts of a corporation (other than a corporation that is an accredited investor) —

- (a) the sole business of which is to hold investments; and
- (b) the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor,

must not be transferred within 6 months after the corporation has acquired any securities or securities-based derivatives contracts pursuant to an offer made in reliance on an exemption under section 275 unless —

- (c) that transfer —
- (i) is made only to institutional investors or relevant persons as defined in section 275(2); or
- (ii) arises from an offer referred to in section 275(1A);
- (d) no consideration is or will be given for the transfer; or
- (e) the transfer is by operation of law.

[2/2009; 4/2017]

(4) Subject to subsection (7), where —

- (a) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and
- (b) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust must not be transferred within 6 months after securities or securities-based derivatives contracts are acquired for the trust pursuant to an offer made in reliance on an exemption under section 275 unless —

(c) that transfer —

- (i) is made only to institutional investors or relevant persons as defined in section 275(2); or
- (ii) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or securities-based derivatives contracts or other assets;

(d) no consideration is or will be given for the transfer; or

(e) the transfer is by operation of law.

[2/2009; 4/2017]

(5) To avoid doubt, the reference to beneficiaries in subsection (4) includes a reference to unitholders of a business trust and participants of a collective investment scheme.

(6) To avoid doubt, where any securities or securities-based derivatives contracts are acquired pursuant to an offer made in reliance on an exemption under section 274 or 275, an offer to sell those securities or securities-based derivatives contracts may be made in reliance on an exemption under section 273(1)(d) or (e) after 6 months have elapsed from the date of the firstmentioned offer.

[4/2017]

(7) Subsections (1), (3) and (4) do not apply where the securities or securities-based derivatives contracts of the corporation that are acquired are of the same class as other securities or securities-based derivatives contracts of the corporation —

- (a) that are listed for quotation on an approved exchange; and
- (b) in respect of which any offer information statement, introductory document, shareholders' circular for a reverse take-over, document issued for the purposes of a scheme of arrangement, or any other similar document approved by an approved exchange, was issued in connection with —
  - (i) an offer of those securities or securities-based derivatives contracts; or
  - (ii) the listing for quotation of those securities or securities-based derivatives contracts.

### **Offer made using offer information statement**

**277.**—(1) Subject to subsection (1A), Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of securities or securities-based derivatives contracts (not being such securities or securities-based derivatives contracts as may be prescribed by regulations made under section 341) if the following conditions are satisfied:

- (a) where the securities or securities-based derivatives contracts offered —
  - (i) are units of shares or debentures, those units of shares or debentures are issued by an entity whose shares are listed for quotation on an approved exchange, whether by means of a rights issue or otherwise; and
  - (ii) are units or derivatives of units in a business trust, the units or derivatives of units in the business trust are issued by a trustee-manager acting in its capacity as the trustee-manager of the business trust, where units of the business trust which have been previously



issued are listed for quotation on an approved exchange, whether by means of a rights issue or otherwise;

- (b) an offer information statement relating to the offer which complies with such requirements as to form and content as may be prescribed by regulations made under section 341 is lodged with the Authority;
- (c) either —
  - (i) the offer is made in, or accompanied by, the offer information statement mentioned in paragraph (b); or
  - (ii) all the conditions in subsection (1B) are satisfied.

[4/2017]

(1A) Subsection (1) only applies to an offer of securities or securities-based derivatives contracts referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.

[2/2009; 4/2017]

(1AB) In relation to an offer of securities —

- (a) where the securities are issued, whether by means of a rights issue or otherwise, by a subsidiary (called in this section the subsidiary) of an entity whose shares are listed for quotation on an approved exchange (called in this section the listed entity); and
- (b) where the listed entity has guaranteed, or has agreed to guarantee, unconditionally and irrevocably, all payment obligations (whether in cash, in kind or otherwise) of the subsidiary arising from the securities,

the Authority may, on the application of the subsidiary or the listed entity, declare by written notice to the applicant that the provision of an offer information statement in lieu of a prospectus relating to an offer of securities would not be prejudicial to investors of such securities.

[4/2017]

(1AC) Where the Authority makes a declaration mentioned in subsection (1AB) in relation to an offer of securities, Subdivisions (2)

and (3) of this Division (other than section 257) do not apply to the offer of securities for a period of 6 months starting on the date of the declaration if all of the following conditions are satisfied:

- (a) the offer information statement relating to the offer of securities —
  - (i) complies with such requirements as to form and content as may be prescribed by regulations made under section 341;
  - (ii) is signed by every director, or equivalent person, of the subsidiary and the listed entity; and
  - (iii) is lodged by the subsidiary or the listed entity, with the Authority;
- (b) either —
  - (i) the offer of securities is made in, or accompanied by, the offer information statement mentioned in paragraph (a); or
  - (ii) all the conditions in subsection (1B) are satisfied.

[4/2017]

(1AD) The Authority may, on making a declaration under subsection (1AB), provide that the offer of securities may only be made subject to such conditions or restrictions as the Authority may impose.

[4/2017]

(1B) The conditions mentioned in subsections (1)(c)(ii) and (1AC)(b)(ii) are —

- (a) the offer is made using any automated teller machine or such other electronic means as the Authority may prescribe;
- (b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —
  - (i) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and

- (ii) that the prospective subscriber or buyer should read the offer information statement before submitting an application,

before enabling the prospective subscriber or buyer to submit any application to subscribe for or purchase securities or securities-based derivatives contracts; and

- (c) the person making the offer complies with such other requirements as the Authority may prescribe.

[4/2017]

(2) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as the Authority may determine.

(3) Sections 249, 249A, 253, 254 and 255 apply in relation to an offer information statement referred to in subsection (1) or (1AC) as they apply in relation to a prospectus.

[4/2017]

(4) For the purposes of subsection (3) —

- (a) a reference in section 249 or 249A to the registration of the prospectus is to be read as a reference to the lodgment of the offer information statement;
- (b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus under section 243 is to be read as a reference to any information prescribed under subsection (1)(b); and
- (c) in relation to an offer information statement mentioned in subsection (1AC), a reference in section 253(4)(a), (b) or (c) or 254(3)(a), (b) or (c) to the person making the offer is to be read as a reference to the subsidiary and the listed entity.

[4/2017]

(5) Where the written consent of an expert is required to be given under section 249 (as applied in relation to an offer information statement under subsection (3)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(6) Where the written consent of an issue manager or underwriter is required to be given under section 249A (as applied in relation to an offer information statement under subsection (3)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(7) A person must not advertise an offer or intended offer of any securities or securities-based derivatives contracts referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the securities or securities-based derivatives contracts, unless the advertisement or publication complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012; 4/2017]

(8) Any person who contravenes subsection (7), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Offer in respect of international debentures**

**278.**—(1) Subdivisions (2) and (3) of this Division (other than section 257) do not apply to an offer of debentures, or units of debentures, by a body incorporated in a country outside Singapore where the offer —

- (a) is made by the holder of a capital markets services licence to deal in capital markets products that are securities or securities-based derivatives contracts or an exempt person under section 99(1)(a) or (b), to such institutional, professional or business investors as the Authority may, by order in the *Gazette*, specify, being persons or bodies that appear to the Authority to have sufficient expertise to understand any risk involved in buying or selling those

debentures, or units of debentures (whether as principal or agent); and

(b) complies with the conditions specified in subsection (2).  
[4/2017]

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

(a) the debentures, or units of debentures, are denominated in a currency, other than the Singapore dollar, and each debenture, or each unit of debenture, has a face value of at least US\$5,000 or its equivalent in another currency; and

(b) the shares of the issuing corporation are listed on a recognised securities exchange or the offer is guaranteed by a corporation whose shares are listed on a recognised securities exchange.

(3) The Authority may by order in the *Gazette* add to, vary or amend the conditions specified in subsection (2).

### **Offer of debentures made by Government or international financial institutions**

**279.** Subdivisions (2) and (3) of this Division do not apply to an offer of debentures, or units of debentures, made by or guaranteed by —

(a) the Government; or

(b) an international financial institution in which Singapore holds membership of any class or description, whether or not it holds any share in the share capital of that institution.

### **Making offer using automated teller machine or electronic means**

**280.**—(1) Subject to subsection (3) and such requirements as the Authority may prescribe, a person making an offer of securities or securities-based derivatives contracts using —

(a) any automated teller machine; or

- (b) such other electronic means as the Authority may prescribe,

is exempted from the requirement under section 240(1)(a) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 240(4) that the offer be made in or accompanied by a profile statement in respect of the offer.

[4/2017]

(2) To avoid doubt, a prospectus which complies with all other requirements of section 240(1)(a) or, where applicable, a profile statement which complies with all other requirements of section 240(4) must still be prepared and issued in respect of any offer referred to in subsection (1).

(3) Subsection (1) does not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

- (a) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and
- (b) that the prospective subscriber or buyer should read the prospectus or, where applicable, profile statement before submitting an application,

before enabling the prospective subscriber or buyer to submit any application to subscribe for or purchase securities or securities-based derivatives contracts.

[4/2017]

### **Information relating to certain offers**

**280A.** The Authority may, by regulations made under section 341, require any person or class of persons to provide the Authority with such information relating to an offer of securities or securities-based derivatives contracts made or proposed to be made in reliance on an exemption under any provision of this Subdivision.

[4/2017]

**Revocation of exemption**

**281.**—(1) Where the Authority considers that a person is contravening, or is likely to contravene, or has contravened any condition or restriction imposed under section 273(6), or that it is necessary in the public interest or for the protection of investors, it may revoke any exemption under this Subdivision, subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation remains in effect unless it is withdrawn by the Authority.

(3) A revocation made under this section is final and there is no appeal from the revocation.

**Transactions under exempted offers subject to Division 2 of Part 12 of Companies Act 1967 and Part 12 of this Act**

**282.** To avoid doubt, it is declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part limits or diminishes any liability which any person may incur in respect of any relevant offence under Division 2 of Part 12 of the Companies Act 1967 or Part 12 of this Act or any penalty, award of compensation or punishment in respect of any such offence.

*Subdivision (5) — General***Power of Authority to issue directions**

**282AA.**—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue directions, whether of a general or specific nature, by written notice —

- (a) to a person making an offer of securities, being an offer made in or accompanied by a prospectus or profile statement or an offer referred to in section 280, on matters in connection with the offer;

(b) to a person referred to in paragraph (a) who is a borrowing entity, on matters in connection with the requirements and obligations under Subdivision (3) of this Division, in addition to the matters referred to in paragraph (a); or

(c) to a trustee appointed under section 265A(1).

[34/2012]

(2) Any person to whom a notice is given under subsection (1) must comply with every direction contained in the notice.

[34/2012]

(3) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

(4) Any person who contravenes a direction issued to the person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) No criminal or civil liability shall be incurred by a trustee appointed under section 265A(1), or by any person acting on behalf of such a trustee, for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the compliance or purported compliance with a direction issued to the trustee under subsection (1).

[34/2012]

## *Division 2 — Collective Investment Schemes*

### *Subdivision (1) — Interpretation*

#### **Interpretation of this Division**

**283.—**(1) In this Division, unless the context otherwise requires —

“authorised real estate investment trust” means a real estate investment trust that is a collective investment scheme authorised under section 286;



“control”, in relation to an entity, means the capacity of a person to determine the outcome of decisions on the financial and operating policies of the entity, having regard to —

- (a) the influence which the person can, in practice, exert on the entity (as opposed to the rights which the person can exercise in the entity); and
- (b) any practice or pattern of behaviour of the person affecting the financial or operating policies of the entity (even if such practice or pattern of behaviour involves a breach of an agreement or a breach of trust),

but does not include any capacity of a person to influence decisions on the financial and operating policies of the entity if such influence is required by law or under any contract or order of court to be exercised for the benefit of other persons;

“immediate family”, in relation to an individual, means the individual’s spouse, son, adopted son, stepson, daughter, adopted daughter, stepdaughter, father, stepfather, mother, stepmother, brother, stepbrother, sister or stepsister;

“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, units in a collective investment scheme to be issued or sold and which contains the information required to be included in a prospectus as may be prescribed under section 296(1)(a)(i), except for such information as the Authority may prescribe;

“product highlights sheet” means a product highlights sheet referred to in section 296A(1);

“profile statement” means a profile statement referred to in section 296(2);

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of units in a collective investment scheme or

proposed collective investment scheme, but does not include —

- (a) a profile statement;
- (b) any material, advertisement or publication which is authorised by section 300 (other than subsection (3));  
or
- (c) a product highlights sheet;

“recognised real estate investment trust” means a real estate investment trust that is a collective investment scheme recognised under section 287;

“recognised securities exchange” means a corporation which has been declared by the Authority, by order in the *Gazette*, to be a recognised securities exchange for the purposes of this Division;

“related party” means —

- (a) in relation to an entity —
  - (i) a director or an equivalent person of the entity;
  - (ii) the chief executive officer or an equivalent person of the entity;
  - (iii) a person who controls the entity;
  - (iv) a related corporation;
  - (v) any other entity controlled by it;
  - (vi) any other entity controlled by the person referred to in sub-paragraph (iii); and
  - (vii) a related party of any individual referred to in sub-paragraph (i), (ii) or (iii); and
- (b) in relation to an individual —
  - (i) his or her immediate family;
  - (ii) a trustee of any trust of which the individual or any member of the individual’s immediate family is —

(A) a beneficiary; or

(B) where the trust is a discretionary trust, a discretionary object,

when the trustee acts in that capacity; and

(iii) any corporation in which the individual and his or her immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the total votes attached to all voting shares;

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 298(1), as the case may be;

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 298(1), as the case may be;

“unit trust” means a collective investment scheme under which the property is held on trust for the participants.

*[2/2009; 34/2012; 4/2017]*

(2) For the purposes of this Division, a statement is deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) For the purposes of this Division, a person makes an offer of units in a collective investment scheme if, and only if, as principal —

(a) the person makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those units by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale; or

(b) the person invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those units by the firstmentioned person or another

person with whom the firstmentioned person has made arrangements for that issue or sale.

(4) In subsection (3), “sale” includes any disposal for valuable consideration.

### **Use of term “real estate investment trust”**

**283A.**—(1) A person must not, when describing or referring to any arrangement the rights or interests of which are, will be or have been the subject of an offer or intended offer, use the term “real estate investment trust” or any of its derivatives in any language in the name or description or any representation of that arrangement, unless —

- (a) the arrangement is authorised under section 286 or is one for which an application for authorisation has been made and has not been refused by the Authority under that section;
- (b) the arrangement is recognised under section 287 or is one for which an application for recognition has been made and has not been refused by the Authority under that section; or
- (c) the Authority has given its consent in writing to that person to use that term or derivative, or that person belongs to a class of persons declared by the Authority by order in the *Gazette* as persons who may use such term or derivative.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

(3) To avoid doubt, in subsection (1) —

- (a) “offer” or “intended offer”, in relation to any rights or interests in an arrangement, includes an offer or intended offer in relation to any such rights or interests that have previously been issued; and
- (b) “representation”, in relation to an arrangement, includes a representation of the arrangement in any bill head, letter

paper, notice, advertisement, publication or writing, whether in electronic, print or other form.

### **Code on Collective Investment Schemes**

**284.**—(1) For the more effective administration, supervision and control of collective investment schemes, the Authority may, under section 321, issue a code, to be known as the Code on Collective Investment Schemes.

(2) The Authority may revise the Code on Collective Investment Schemes by deleting, amending or adding to the provisions thereof.

(3) The Code on Collective Investment Schemes is deemed not to be subsidiary legislation.

### **Authority may disapply this Division to certain offers and invitations**

**284A.** Despite any provision to the contrary in this Division, where —

- (a) an offer of units in a collective investment scheme is one to which (but for this section) both this Division and Division 1 apply; and
- (b) the Authority has by order in the *Gazette* declared that this Division does not apply to that offer or a class of offers to which that offer belongs,

then this Division (other than section 283A) does not apply to that offer.

[2/2009]

### **Division not to apply to certain collective investment schemes which are business trusts**

**284B.** This Division (other than section 283A) does not apply to an offer of units in a collective investment scheme, where —

- (a) the collective investment scheme is also a registered business trust; or

- (b) the collective investment scheme is also a business trust and the offer is made in reliance on an exemption under Subdivision (3) of Division 1A.

[2/2009]

### **Modification of provisions to certain offers**

**284C.** The Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by regulations modify or adapt the provisions of this Division in their application to such offer of units in a collective investment scheme as may be prescribed, and the provisions of this Division apply to such offer subject to such modifications or adaptations.

[2/2009]

#### *Subdivision (2) — Authorisation and recognition*

### **Requirement for authorisation or recognition**

**285.—**(1) A person must not make an offer of units in a collective investment scheme if the collective investment scheme has not been authorised under section 286 or recognised under section 287.

[2/2009]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

### **Authorised schemes**

**286.—**(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, authorise a collective investment scheme constituted in Singapore, subject to —

- (a) subsection (2) or (2A), as the case may be;
- (b) the conditions specified in subsection (3); and

- (c) such conditions or restrictions as the Authority thinks fit to impose by written notice.

[34/2012; 44/2018]

(1A) The Authority may, at any time, by written notice to the responsible person for a collective investment scheme authorised under subsection (1), vary or revoke any condition or restriction imposed by the Authority under subsection (1)(c) or impose such further condition or restriction as the Authority thinks fit.

[34/2012]

(2) The Authority may authorise, under subsection (1), a collective investment scheme which is constituted as a unit trust if and only if the Authority is satisfied that —

- (a) there is a manager for the scheme which satisfies the requirements in subsection (3);
- (b) there is a trustee for the scheme approved under section 289;
- (c) there is a trust deed in respect of the scheme entered into by the manager and the trustee for the scheme that complies with prescribed requirements; and
- (d) the scheme, the manager for the scheme and the trustee for the scheme comply with this Act and the Code on Collective Investment Schemes.

(2A) The Authority may authorise under subsection (1) a collective investment scheme constituted as a VCC or a sub-fund, if and only if the Authority is satisfied that —

- (a) there is a manager for the scheme that satisfies the requirements in subsection (3);
- (b) there is a custodian for the scheme that is a trustee approved under section 289;
- (c) the constitution of the VCC and contractual arrangements in respect of the scheme comply with prescribed requirements and the Variable Capital Companies Act 2018;

- (d) there are at least 3 directors of the VCC, at least one of whom is independent in accordance with the criteria set out in the Code on Collective Investment Schemes; and
- (e) the VCC, the scheme, the manager for the scheme and the custodian for the scheme comply with this Act and the Code on Collective Investment Schemes.

[44/2018]

(3) It is a condition for the authorisation of a collective investment scheme under subsection (1) that —

- (a) the manager of the scheme is —
  - (i) in the case of a collective investment scheme —
    - (A) that is a trust;
    - (B) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and
    - (C) all or any units of which are listed for quotation on an approved exchange,  
the holder of a capital markets services licence for real estate investment trust management; and
  - (ii) in all other cases, the holder of a capital markets services licence for fund management or a person exempted under section 99(1)(a), (b), (c) or (d) in respect of fund management; and
- (b) the manager for the scheme is a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —
  - (i) any person who is or will be employed by or associated with the manager;
  - (ii) any person exercising influence over the manager; or



- (iii) any person exercising influence over a related corporation of the manager.

*[2/2009; 4/2017; S 376/2008]*

(4) The Authority may authorise, under subsection (1), a collective investment scheme which is not constituted as a unit trust, a VCC or a sub-fund if and only if the Authority is satisfied that the scheme and the manager for the scheme comply with such requirements as may be prescribed.

*[44/2018]*

(5) Without affecting subsection (2) or (2A), the Authority may refuse to authorise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

*[2/2009; 44/2018]*

(6) The Authority must not refuse to authorise a collective investment scheme under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to authorise the collective investment scheme on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(7) The responsible person for a collective investment scheme may, within 30 days after the responsible person is notified that the

Authority has refused to authorise that scheme under subsection (1), appeal to the Minister whose decision is final.

(8) An application made under subsection (1) must be accompanied by such information or record as the Authority may require.

(9) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme authorised under subsection (1).

(10) The responsible person for a collective investment scheme authorised under subsection (1) and either —

- (a) the approved trustee for the scheme if it is one constituted as a unit trust; or
- (b) the custodian for the scheme if it is one constituted as a VCC or sub-fund,

to the extent applicable, must ensure that —

- (c) every condition or requirement set out in subsection (2) or (2A) (as the case may be), and subsections (3) and (4); and
- (d) every condition or restriction imposed by the Authority under subsection (1)(c) or (1A),

as applicable to that scheme, continue to be satisfied.

[44/2018]

(10A) The manager of an authorised real estate investment trust must —

- (a) act in the best interests of all the participants of the authorised real estate investment trust as a whole; and
- (b) give priority to the interests of all the participants of the authorised real estate investment trust as a whole over the manager's own interests and the interests of the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the manager's own interests or the interests of the shareholders of the manager.

[4/2017]

(10B) A director of the manager of an authorised real estate investment trust must —

- (a) take all reasonable steps to ensure that the manager discharges its duties under subsection (10A); and
- (b) give priority to the interests of all the participants of the authorised real estate investment trust as a whole over the interests of the manager and the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the interests of the manager or the shareholders of the manager.

[4/2017]

(10C) The duty of a director of the manager mentioned in subsection (10B) overrides any conflicting duty of such director under section 157 of the Companies Act 1967.

[4/2017]

(10D) Civil or criminal proceedings may not be brought against a director of the manager of an authorised real estate investment trust for a breach of section 157 of the Companies Act 1967, any fiduciary duty or any other duty under common law, in relation to any act or omission if such act or omission was required by subsection (10B).

[4/2017]

(10E) To avoid doubt, no action or proceedings of any kind may be brought by or on behalf of all or any of the participants of an authorised real estate investment trust against a director of the manager of that authorised real estate investment trust for any breach or alleged breach of the duties imposed by subsection (10B) except to the extent and in the manner provided for under section 295C.

[4/2017]

(11) Despite subsection (10), a failure by any person to comply with the Code on Collective Investment Schemes does not of itself render that person liable to criminal proceedings but such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(12) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may, in addition to, or as an

alternative to any action under section 288, take such other action as it deems fit.

(13) The responsible person for a collective investment scheme which is authorised under subsection (1) must provide such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(14) Where the manager for a collective investment scheme which is constituted as a unit trust and authorised under subsection (1) fails to comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the trustee for the scheme to remove that person and appoint a new manager for the scheme.

(14A) Where the manager for a collective investment scheme that is constituted as a VCC or a sub-fund, and authorised under subsection (1), fails to comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the VCC to remove that person and appoint a new manager for the scheme.

[44/2018]

(15) Any person who contravenes subsection (10) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(16) A manager of an authorised real estate investment trust which contravenes subsection (10A) —

- (a) shall be liable to all the participants of the authorised real estate investment trust as a whole —
  - (i) for any profit or financial gain directly or indirectly made by the manager or any of its related corporations; or
  - (ii) for any damage suffered by all the participants of the authorised real estate investment trust as a whole, as a result of the contravention; and
- (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

[4/2017]

(17) A director of the manager of an authorised real estate investment trust who contravenes subsection (10B) —

- (a) shall be liable to all the participants of the authorised real estate investment trust as a whole —
  - (i) for any profit or financial gain directly or indirectly made by the director or the manager or any related corporation of the manager; or
  - (ii) for any damage suffered by all the participants of the authorised real estate investment trust as a whole, as a result of the contravention; and
- (b) 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 2 years or to both.

[4/2017]

### **Recognised schemes**

**287.**—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, recognise a collective investment scheme constituted outside Singapore, subject to —

- (a) subsection (2);
- (b) the conditions specified in subsection (3); and
- (c) such conditions or restrictions as the Authority thinks fit to impose by written notice.

[34/2012]

(1A) The Authority may, at any time, by written notice to the responsible person for a collective investment scheme recognised under subsection (1), vary or revoke any condition or restriction imposed by the Authority under subsection (1)(c) or impose such further condition or restriction as the Authority thinks fit.

[34/2012]

(2) In determining whether to recognise a collective investment scheme under subsection (1), the Authority may have regard to the following factors:

- (a) whether the laws and practices of the jurisdictions under which the scheme is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them by or under this Division in the case of comparable authorised schemes;
- (b) such other criteria as may be prescribed by regulations made under section 341.

[4/2017]

(3) Unless otherwise notified in writing by the Authority to the responsible person of the collective investment scheme, the following conditions must be satisfied for the recognition of every collective investment scheme under subsection (1):

- (a) there is a manager for the scheme that —
  - (i) is licensed or regulated in the jurisdiction of its principal place of business; and
  - (ii) is a fit and proper person in the opinion of the Authority, and in considering if a person is a fit and proper person, the Authority may take into account any matter relating to —
    - (A) any person who is or will be employed by or associated with the manager;
    - (B) any person exercising influence over the manager; or
    - (C) any person exercising influence over a related corporation of the manager;
- (b) there is a representative for the scheme for the functions set out in subsection (13) who is —
  - (i) an individual resident in Singapore; or
  - (ii) a company, or a foreign company registered under Division 2 of Part 11 of the Companies Act 1967;
- (c) the scheme, the manager for the scheme and (where applicable) the trustee for the scheme comply with this Act and the Code on Collective Investment Schemes; and

- (d) the responsible person for the collective investment scheme furnishes to the Authority —
- (i) the name of the representative mentioned in paragraph (b) and the representative's address (where such representative is a corporation) or contact particulars (where such representative is an individual); and
  - (ii) any information prescribed by regulations made under section 341.

[4/2017]

(4) Without affecting subsection (2), the Authority may refuse to recognise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

[2/2009]

(5) The Authority must not refuse to recognise a collective investment scheme under subsection (1) without giving the person who made the application an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the collective investment scheme on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(6) The responsible person for a collective investment scheme may, within 30 days after the responsible person is notified that the Authority has refused to recognise that scheme under subsection (1), appeal to the Minister whose decision is final.

(7) An application made under subsection (1) must be accompanied by such information or record as the Authority may require.

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme recognised under subsection (1).

(9) The responsible person for a recognised real estate investment trust must ensure that the conditions set out in subsection (3), and every condition or restriction imposed by the Authority under subsection (1)(c) or (1A), as applicable to that scheme continues to be satisfied.

[4/2017]

(9A) The manager of a recognised real estate investment trust must —

- (a) act in the best interests of all the participants of the recognised real estate investment trust as a whole; and
- (b) give priority to the interests of all the participants of the recognised real estate investment trust as a whole over the manager's own interests and the interests of the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the manager's own interests or the interests of the shareholders of the manager.

[4/2017]

(9B) A director of the manager of a recognised real estate investment trust must —

- (a) take all reasonable steps to ensure that the manager discharges its duties under subsection (9A); and
- (b) give priority to the interests of all the participants of the recognised real estate investment trust as a whole over the interests of the manager and the shareholders of the manager in the event of a conflict between the interests of



all the participants as a whole and the interests of the manager or the shareholders of the manager.

[4/2017]

(9C) A duty of a director of the manager under subsection (9B) overrides any conflicting duty of such director under section 157 of the Companies Act 1967.

[4/2017]

(9D) Civil or criminal proceedings may not be brought against a director of the manager of a recognised real estate investment trust for a breach of section 157 of the Companies Act 1967, any fiduciary duty or any other duty under common law, in relation to any act or omission if such act or omission was required by subsection (9B).

[4/2017]

(9E) To avoid doubt, no action or proceedings whatsoever may be brought by or on behalf of all or any of the participants of a recognised real estate investment trust against a director of the manager of that recognised real estate investment trust for any breach or alleged breach of the duties imposed by subsection (9B) except to the extent and in the manner provided for under section 295C.

[4/2017]

(10) Despite subsection (9), a failure by any person to comply with the Code on Collective Investment Schemes does not of itself render that person liable to criminal proceedings but may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(11) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(12) The responsible person for a collective investment scheme which is recognised under subsection (1) must provide such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(13) The representative for a collective investment scheme which is recognised under subsection (1) must carry out, or procure the carrying out of the following functions:

- (a) facilitate —
- (i) the issuing and redeeming of units in the scheme;
  - (ii) the publishing of sale and purchase prices of units in the scheme;
  - (iii) the sending of reports of the scheme to participants;
  - (iv) the provision of such books relating to the sale and redemption of units as the Authority may require; and
  - (v) the inspection of the instruments constituting the scheme;
- (b) either maintain for inspection in Singapore a subsidiary register of participants who subscribed for or purchased their units in Singapore, or maintain in Singapore any facility that enables the inspection or extraction of the equivalent information;
- (c) within 14 days after any change in the particulars referred to in subsection (3)(d), give written notice of such change to the Authority;
- (d) provide such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act;
- (e) such other functions as the Authority may prescribe.

[4/2017]

(13A) In carrying out or procuring the carrying out of the functions referred to in subsection (13), the representative must ensure that —

- (a) for the purposes of subsection (13)(a)(ii), the sale and purchase prices of units in the collective investment scheme are published in the language of the prospectus;
- (b) for the purposes of subsection (13)(a)(iii), the reports of the scheme sent to participants are prepared in the language of the prospectus, except in relation to any participant who has consented to being sent a report in a language other than the language of the prospectus;

- (c) for the purposes of subsection (13)(a)(v), if the instruments constituting the scheme are not in the language of the prospectus, an accurate translation of the instruments in the language of the prospectus is made available to a participant for inspection, unless the participant has consented to the making available to that participant for inspection of the instruments in a language other than the language of the prospectus; and
- (d) for the purposes of subsection (13)(b), if the subsidiary register of participants or equivalent information is not in the language of the prospectus, an accurate translation of the register or equivalent information in the language of the prospectus is made available to a participant for inspection or extraction, unless the participant has consented to the making available to that participant for inspection or extraction of the register or equivalent information in a language other than the language of the prospectus.

(13B) In subsection (13A), “language of the prospectus” means the language of the prospectus accompanying or making the offer of units in the collective investment scheme.

(13C) Section 318A(2) does not apply to the instruments constituting the scheme referred to in subsection (13)(a)(v) or to the subsidiary register of participants or equivalent information referred to in subsection (13)(b).

(14) Any person who contravenes subsection (9), (12) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(15) A manager of a recognised real estate investment trust which contravenes subsection (9A) —

- (a) shall be liable to all the participants of the recognised real estate investment trust as a whole —

- (i) for any profit or financial gain directly or indirectly made by the manager or any of its related corporations; or
  - (ii) for any damage suffered by all the participants of the recognised real estate investment trust as a whole, as a result of the contravention; and
- (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

[4/2017]

(16) A director of the manager of a recognised real estate investment trust who contravenes subsection (9B) —

- (a) shall be liable to all the participants of the recognised real estate investment trust as a whole —
- (i) for any profit or financial gain directly or indirectly made by the director or the manager or any related corporation of the manager; or
  - (ii) for any damage suffered by all the participants of the recognised real estate investment trust as a whole, as a result of the contravention; and
- (b) 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 2 years or to both.

[4/2017]

### **Revocation, suspension or withdrawal of authorisation or recognition**

**288.**—(1) The Authority may revoke the authorisation of a collective investment scheme granted under section 286 or the recognition of a collective investment scheme granted under section 287 if —

- (a) the application for authorisation or recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material

particular or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the authorisation or recognition;

- (aa) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be against the public interest;
- (b) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be prejudicial to its participants or potential participants;
- (ba) in the case of a scheme recognised under section 287, the Authority is of the opinion that it is necessary to revoke the recognition of the scheme to give effect to the provisions of any arrangement relating to cross-border offers of collective investment schemes to which Singapore or the Authority is a party; or
- (c) in the case of —
  - (i) a scheme authorised under section 286 that is constituted as a unit trust, the responsible person for the scheme or the trustee for the scheme (where applicable) fails to comply with section 286(10) or (13);
  - (ia) a scheme authorised under section 286 that is constituted as a VCC or as a sub-fund, the responsible person for the scheme, the manager for the scheme, or the custodian for the scheme (where applicable), fails to comply with section 286(10) or (13); or
  - (ii) a scheme recognised under section 287, the responsible person for the scheme or the representative for the scheme, where applicable, fails to comply with section 287(9), (12) or (13).

*[4/2017; 44/2018]*

(2) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1), the Authority

may issue such directions as it deems fit to the responsible person for the scheme, including a direction that the responsible person —

- (a) refund all moneys contributed by the participants of the scheme; or
- (b) provide the participants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund of all moneys contributed by them or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2), the Authority must consider whether the responsible person for the collective investment scheme is able to liquidate the property of the scheme without material adverse financial effect to the participants, and for this purpose, the factors which the Authority may take into account include —

- (a) whether a significant amount of the moneys contributed by the participants has been invested;
- (b) the liquidity of the property of the scheme; and
- (c) the penalties (if any) payable for liquidating the property.

(4) A responsible person who contravenes any of the directions issued by the Authority to the responsible person under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(5) Despite subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the authorisation or recognition of a collective investment scheme, suspend the authorisation or recognition of that scheme for a specific period, and may at any time remove such suspension.

(6) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1) or suspends the authorisation or recognition of a collective investment scheme under subsection (5), it must notify the responsible person for the scheme.

(7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the responsible person for a collective investment scheme, in such form and manner as may be prescribed, withdraw the authorisation or recognition of that scheme.

(8) The Authority may refuse to withdraw the authorisation or recognition of a collective investment scheme under subsection (7) where the Authority is of the opinion that —

- (a) there is any matter concerning the scheme which should be investigated before the authorisation or recognition is withdrawn; or
- (b) the withdrawal of the authorisation or recognition would not be in the public interest.

(8A) The Authority must not —

- (a) revoke the authorisation or recognition of a collective investment scheme under subsection (1);
- (b) suspend the authorisation or recognition of a collective investment scheme under subsection (5); or
- (c) refuse the withdrawal of the authorisation or recognition of a collective investment scheme under subsection (8),

without giving the responsible person of the scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the revocation or suspension is on the ground that the continued authorisation or recognition of the scheme is against the public interest on the basis of any of the following circumstances:

- (d) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (e) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (f) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person

making the offer (being an entity), the responsible person or the collective investment scheme.

(8B) The responsible person for a collective investment scheme may, within 30 days after the responsible person is notified that the Authority —

- (a) has revoked the authorisation or recognition of that scheme under subsection (1);
- (b) has suspended the authorisation or recognition of that scheme under subsection (5); or
- (c) has refused to withdraw the authorisation or recognition of that scheme under subsection (8),

appeal to the Minister whose decision is final.

(9) Where the Authority revokes an authorisation or recognition under subsection (1), suspends an authorisation or recognition under subsection (5) or withdraws an authorisation or recognition under subsection (7), it may —

- (a) impose such conditions on the revocation, suspension or withdrawal as it considers appropriate; and
- (b) publish notice of the revocation, suspension or withdrawal, and the reason therefor, in such manner as it considers appropriate.

### **Approval of trustees**

**289.**—(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, approve a public company to act as a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts (called in this Subdivision an approved trustee), subject to such conditions or restrictions as the Authority thinks fit to impose by written notice.

*[34/2012]*

(1A) The Authority may, at any time, by written notice to the approved trustee, vary or revoke any condition or restriction imposed



by the Authority under subsection (1) or impose such further condition or restriction as the Authority thinks fit.

[34/2012]

(2) The Authority must not approve a public company to act as trustee under subsection (1) unless the company satisfies such financial requirements and other criteria as the Authority may prescribe.

(3) An approved trustee must continue to satisfy the financial requirements and other criteria prescribed under subsection (2) and every condition or restriction imposed by the Authority under subsection (1) or (1A).

[34/2012]

(4) Where the Authority is of the opinion that an approved trustee —

- (a) has failed to satisfy a financial requirement or other criterion prescribed under subsection (2), or any condition or restriction imposed by the Authority under subsection (1) or (1A);
- (b) has not carried out its duties with due care and diligence;
- (c) has acted in a manner which prejudices the participants of any authorised collective investment scheme; or
- (d) has failed to comply with this Act or the Code on Collective Investment Schemes,

the Authority may —

- (e) revoke an approval granted under this section and may direct the manager for the collective investment scheme or schemes which such approved trustee was acting for, to appoint a new trustee for the scheme or schemes;
- (f) prohibit such approved trustee from acting as trustee for any new collective investment scheme; or
- (g) issue such direction as it deems fit.

[34/2012]

(4A) Where, upon the Authority exercising any power under section 292D(2) or the Minister exercising any power under

Division 2, 3, 4 or 4A of Part 4B of the Monetary Authority of Singapore Act 1970 in relation to an approved trustee, the Authority considers that it is in the public interest to do so, the Authority may —

- (a) revoke the approval granted to the approved trustee under this section; and
- (b) direct the manager for the collective investment scheme or schemes, which the approved trustee was acting for, to appoint a new trustee for the scheme or schemes.

[10/2013; 31/2017]

(5) An approved trustee must comply with any direction issued to it under subsection (4).

(6) It is not necessary to publish any direction issued under subsection (4) in the *Gazette*.

[34/2012]

(7) Any approved trustee who contravenes subsection (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

### **Inspection of approved trustees**

**290.**—(1) The Authority may, from time to time, inspect the books of an approved trustee.

(2) For the purpose of an inspection under this section, the approved trustee under inspection must afford the Authority access to, and must produce, its books and must give such information and facilities as may be required to conduct the inspection.

(3) The Authority has the power to copy or take possession of the books of an approved trustee under inspection.

(4) An approved trustee which fails, without reasonable excuse, to produce any book or provide any information or facilities in accordance with subsection (2), or otherwise obstructs the Authority in the exercise of its powers under this section, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

**Duty of trustees to furnish Authority with such return and information as Authority requires**

**291.** An approved trustee must furnish such returns and provide such information relating to its business as the Authority may require.

**Liability of trustees**

**292.**—(1) Subject to subsection (2), any provision in a trust deed required under section 286(2)(c) or in any contract with the participants of a collective investment scheme to which such a trust deed relates, is void insofar as it would have the effect of exempting a trustee under the trust deed from, or indemnifying a trustee against, liability for breach of trust where the trustee fails to exercise the degree of care and diligence required of a trustee.

(2) Subsection (1) does not invalidate —

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given —
  - (i) on the agreement thereto of a majority of not less than three-fourths of the participants in a collective investment scheme voting in person or by proxy at a meeting summoned for the purpose; and
  - (ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

**Disqualification or removal of director or executive officer**

**292A.**—(1) Despite the provisions of any other written law —

- (a) an approved trustee must not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

- (b) an approved trustee which is incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its director,  
if the person —
- (c) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after 18 April 2013, being an offence —
- (i) involving fraud or dishonesty;
  - (ii) the conviction for which involved a finding that the person had acted fraudulently or dishonestly; or
  - (iii) that is specified in the Third Schedule to the Registration of Criminals Act 1949;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against the person in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the person's creditors, being a compromise or scheme of arrangement that is still in operation;
- (g) has had a prohibition order under section 68 of the Financial Advisers Act 2001, section 74 of the Insurance Act 1966, section 101A or 123ZZC made against the person that remains in force; or
- (h) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
- (i) which is being or has been wound up by a court; or
  - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign

country or territory, by the regulatory authority in that foreign country or territory.

*[10/2013; 4/2017]*

(2) Despite the provisions of any other written law, where the Authority is satisfied that a director of an approved trustee which is incorporated in Singapore, or an executive officer of an approved trustee —

(a) has wilfully contravened or wilfully caused the approved trustee to contravene any provision of this Act;

(b) has, without reasonable excuse, failed to secure the compliance of the approved trustee with this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act; or

(c) has failed to discharge any of the duties of his or her office, the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by written notice to the approved trustee, direct the approved trustee to remove the director or executive officer (as the case may be) from his or her office or employment within such period as the Authority may specify in the notice, and the approved trustee must comply with the notice.

*[10/2013]*

(3) Without affecting any other matter that the Authority may consider relevant, the Authority must, when determining whether a director or an executive officer of an approved trustee has failed to discharge the duties of his or her office for the purposes of subsection (2)(c), have regard to such criteria as may be prescribed.

*[10/2013]*

(4) Before directing an approved trustee to remove a person from his or her office or employment under subsection (2), the Authority must —

(a) give the approved trustee and the person written notice of its intention to do so; and

(b) in the notice referred to in paragraph (a), call upon the approved trustee and the person to show cause, within such

time as may be specified in the notice, why the person should not be removed.

[10/2013]

(5) If the approved trustee and the person referred to in subsection (4) —

(a) fail to show cause within the time specified under subsection (4)(b) or within such extended period of time as the Authority may allow; or

(b) fail to show sufficient cause,

the Authority may direct the approved trustee to remove the person under subsection (2).

[10/2013]

(6) Any approved trustee which, or any director or executive officer of an approved trustee who, is aggrieved by a direction of the Authority under subsection (2) may, within 30 days after receiving the direction, appeal in writing to the Minister, whose decision is final.

[10/2013]

(7) Any approved trustee which contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(8) No criminal or civil liability shall be incurred by an approved trustee, or any person acting on behalf of the approved trustee, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the approved trustee under this section.

[10/2013]

(9) In this section, unless the context otherwise requires —

“regulated financial institution” means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act 1970 or any of the written laws set out in the Schedule to that Act.

[10/2013]

### **Information of insolvency, etc.**

**292B.**—(1) Any approved trustee which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, must immediately inform the Authority of that fact.

[10/2013]

(2) Any approved trustee which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Interpretation of sections 292C to 292H**

**292C.** In this section and sections 292D, 292E, 292F, 292G and 292H, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to an approved trustee, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved trustee, or acting in an equivalent capacity in relation to the approved trustee;

“relevant business” means any business of an approved trustee —

- (a) which the Authority has assumed control of under section 292D; or
- (b) in relation to which a statutory adviser or a statutory manager has been appointed under section 292D;

“statutory adviser” means a statutory adviser appointed under section 292D;

“statutory manager” means a statutory manager appointed under section 292D.

[10/2013]

**Action by Authority if approved trustee unable to meet obligations, etc.**

**292D.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

- (a) an approved trustee informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (b) an approved trustee becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that an approved trustee —
  - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors;
  - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
  - (iii) has contravened any of the provisions of this Act; or
  - (iv) has failed to comply with any condition or restriction imposed on it under section 289(1) or (1A); or
- (d) the Authority considers it in the public interest to do so.

[10/2013]

(2) Subject to subsections (1) and (3), the Authority may —

- (a) require the approved trustee immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;



- (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved trustee on the proper management of such of the business of the approved trustee as the Authority may determine; or
- (c) assume control of and manage such of the business of the approved trustee as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

[10/2013]

(3) Where the Authority appoints 2 or more persons as the statutory manager of an approved trustee, the Authority must specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) must be discharged or exercised by such persons jointly; and
- (c) must be discharged or exercised by a specified person or such persons.

[10/2013]

(4) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its power under section 289(4A), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

[10/2013]

(5) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or

omitted to be done with reasonable care and in good faith in the course of or in connection with —

- (a) the exercise or purported exercise of any power under this Act;
- (b) the performance or purported performance of any function or duty under this Act; or
- (c) the compliance or purported compliance with this Act.

[10/2013]

(6) Any approved trustee that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Effect of assumption of control under section 292D**

**292E.**—(1) Upon assuming control of the relevant business of an approved trustee, the Authority or statutory manager (as the case may be) must take custody or control of the relevant business.

[10/2013]

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee, the Authority or statutory manager —

- (a) must manage the relevant business of the approved trustee in the name of and on behalf of the approved trustee; and
- (b) is deemed to be an agent of the approved trustee.

[10/2013]

(3) In managing the relevant business of an approved trustee, the Authority or statutory manager —

- (a) must consider the interests of the public or the section of the public referred to in section 292D(1)(c)(i), and the need to protect investors; and
- (b) has all the duties, powers and functions of the members of the board of directors of the approved trustee (collectively

and individually) under this Act, the Companies Act 1967 and the constitution of the approved trustee, including powers of delegation, in relation to the relevant business of the approved trustee; but nothing in this paragraph requires the Authority or statutory manager to call any meeting of the approved trustee under the Companies Act 1967 or the constitution of the approved trustee.

[10/2013]

(4) Despite any written law or rule of law, upon the assumption of control of the relevant business of an approved trustee by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved trustee, which was in force immediately before the assumption of control, is deemed to be revoked, unless the Authority gives its approval, by written notice to the person and the approved trustee, for the person to remain in the appointment.

[10/2013]

(5) Despite any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved trustee, except with the approval of the Authority, no person may be appointed as the chief executive officer or a director of the approved trustee.

[10/2013]

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive officer or a director of an approved trustee, the Authority may at any time, by written notice to the person and the approved trustee, revoke that approval, and the appointment is deemed to be revoked on the date specified in the notice.

[10/2013]

(7) Despite any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved trustee is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved trustee during the period when the Authority or statutory manager is in control of the relevant business of the approved trustee —

(a) the act or purported act of the person is invalid and of no effect; and

(b) the person shall be guilty of an offence.

[10/2013]

(8) Despite any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved trustee in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved trustee during the period when the Authority or statutory manager is in control of the relevant business of the approved trustee —

(a) the act or purported act of the person is invalid and of no effect; and

(b) the person shall be guilty of an offence.

[10/2013]

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee —

(a) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved trustee,

the direction or decision referred to in sub-paragraph (i), to the extent of the conflict or inconsistency, prevails over the direction or decision referred to in sub-paragraph (ii); and

(b) no person may exercise any voting or other right attached to any share in the approved trustee in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

[10/2013]

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(11) In this section, “constitution”, in relation to an approved trustee, means the memorandum of association and articles of association of the approved trustee.

[10/2013]

### **Duration of control**

**292F.**—(1) The Authority must cease to be in control of the relevant business of an approved trustee when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 292D(1)(c)(i) or for the protection of investors.

[10/2013]

(2) A statutory manager is deemed to have assumed control of the relevant business of an approved trustee on the date of the statutory manager’s appointment as such.

[10/2013]

(3) The appointment of a statutory manager in relation to the relevant business of an approved trustee may be revoked by the Authority at any time —

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist; or
  - (ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 292D(1)(c)(i) or for the protection of investors; or

(b) on any other ground,  
and upon such revocation, the statutory manager ceases to be in control of the relevant business of the approved trustee.

[10/2013]

(4) The Authority must, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

- (a) the Authority's assumption of control of the relevant business of an approved trustee;
- (b) the cessation of the Authority's control of the relevant business of an approved trustee;
- (c) the appointment of a statutory manager in relation to the relevant business of an approved trustee; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of an approved trustee.

[10/2013]

### **Responsibilities of officers, member, etc., of approved trustee**

**292G.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee —

- (a) the General Division of the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved trustee to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the General Division of the High Court may specify, any property or book of the approved trustee which is comprised in, forms part of or relates to the relevant business of the approved trustee, and which is in the person's possession or control; and

- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved trustee must give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved trustee, within such time and in such manner as the Authority or statutory manager may specify.

[10/2013; 40/2019]

(2) Any person who —

- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
- (b) in purported compliance with subsection (1)(b), knowingly or recklessly provides any information or document that 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 \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

### **Remuneration and expenses of Authority and others in certain cases**

**292H.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved trustee —

- (a) to a statutory manager or statutory adviser appointed in relation to the approved trustee, whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the approved trustee, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the

relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[10/2013]

(2) The approved trustee must reimburse the Authority any remuneration and expenses payable by the approved trustee to a statutory manager or statutory adviser.

[10/2013]

### **Authority may issue directions**

**293.**—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue directions by written notice either of a general or specific nature to —

- (a) where a collective investment scheme is constituted as a corporation, VCC or sub-fund of a VCC, the corporation or VCC, as the case may be;
- (b) the manager, trustee, custodian or representative for a collective investment scheme; or
- (c) any class of such persons referred to in paragraph (a) or (b).

[34/2012; 44/2018]

(2) Any person to whom a notice is given under subsection (1) must comply with such direction as may be contained in the notice.

(3) It is not necessary to publish any direction issued under subsection (1) in the *Gazette*.

[34/2012]

(4) Any person who contravenes any of the directions issued to the person under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.



**Service**

**294.**—(1) Where a collective investment scheme —

- (a) is authorised under section 286 and constituted as a unit trust, any document relating to the scheme is sufficiently served if served on the responsible person for the scheme at the responsible person's last known address;
- (aa) is authorised under section 286 and constituted as a VCC or sub-fund, any document relating to the scheme is sufficiently served if served on the VCC in accordance with section 149 of the Variable Capital Companies Act 2018; or
- (b) is recognised under section 287, any document relating to the scheme is sufficiently served if served on the responsible person for the scheme or the representative for the scheme at the person's last known address.

[44/2018]

(1A) To avoid doubt, a reference in subsection (1) to service of any document relating to the scheme includes the service of any process in relation to the scheme.

(2) Any notice or direction to be given or served by the Authority on —

- (a) in a case where a collective investment scheme is constituted as a corporation — the corporation;
- (b) in a case where a collective investment scheme is constituted as a VCC or a sub-fund — the VCC;
- (c) the manager for a collective investment scheme;
- (d) the trustee or custodian for a collective investment scheme;  
or
- (e) the representative for a collective investment scheme,

is for all purposes regarded as duly given or served if it has been delivered or sent by post or by fax to such person at the person's last known address.

[44/2018]

(3) In the case of a corporation, the last known address referred to in subsections (1) and (2) is —

- (a) if it is a company or VCC incorporated in Singapore, the address of its registered office in Singapore; or
- (b) if it is a foreign company, the address of its registered office in Singapore or the registered address of its authorised representative, referred to in section 366(1) of the Companies Act 1967, or, if it does not maintain a place of business in Singapore, its registered office in the place of its incorporation.

[35/2014; 44/2018]

## Winding up

**295.**—(1) Where a collective investment scheme (other than one constituted as a VCC or sub-fund) is to be wound up, whether under this section or otherwise, the responsible person for the scheme must give written notice of the proposed winding up to the Authority at least 7 days before the winding up.

[44/2018]

(1A) Where a collective investment scheme constituted as a VCC or sub-fund is being wound up under the Variable Capital Companies Act 2018, the VCC must give written notice to the Authority of the winding up within 3 days after the commencement of the winding up.

[44/2018]

(2) Where the Authority revokes or withdraws the authorisation of a collective investment scheme under section 288, the responsible person and, where applicable, the trustee must take the necessary steps to wind up the scheme.

(3) Where —

- (a) the responsible person for a collective investment scheme authorised under section 286 which is constituted as a unit trust is in liquidation; or

- (b) in the opinion of the trustee for a collective investment scheme authorised under section 286 which is constituted as a unit trust, the responsible person for the scheme has ceased to carry on business or has, to the prejudice of the participants of the scheme, failed to comply with any provision of the trust deed in respect of the scheme,

the trustee must summon a meeting of the participants for the purpose of determining an appropriate course of action.

[44/2018]

(4) A meeting under subsection (3) must be summoned —

- (a) by giving written notice of the proposed meeting at least 21 days before the proposed meeting to each participant at the participant's last known address or, in the case of joint participants, to the participant whose name stands first in the records of the responsible person for the scheme; and
- (b) by publishing, at least 21 days before the proposed meeting, an advertisement giving notice of the meeting in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

(5) If at any such meeting a resolution is passed by a majority in number representing three-fourths in value of the participants present and voting either in person or by proxy at the meeting that the scheme to which the trust deed relates be wound up, the responsible person for the scheme and, where applicable, the trustee must take the necessary steps to wind up the scheme.

(6) Any responsible person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(6A) Any VCC that without reasonable excuse contravenes subsection (1A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[44/2018]

(7) Any responsible person or, where applicable, trustee who contravenes subsection (2) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(8) Any trustee who contravenes subsection (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

**Power to acquire units of participants of real estate investment trust in certain circumstances**

**295A.**—(1) Where an arrangement or a contract involving the transfer of all of the units, or all of the units in any particular class, in a real estate investment trust (called in this section the subject trust), to —

- (a) the trustee of another trust (including the trustee-manager of a business trust and the trustee of another real estate investment trust); or
- (b) a corporation,

(called in this section the transferee) has, within 4 months after the making of the offer in that behalf by the transferee, been approved as to the units or as to each class of units whose transfer is involved by participants of the subject trust holding no less than 90% of the total number of those units or of the units of that class (other than units already held at the date of the offer by the transferee), the transferee may, at any time within 2 months after the offer has been so approved, give notice in the prescribed manner to any dissenting participant of the subject trust that it desires to acquire the dissenting participant's units.

[2/2009]

(2) When a notice referred to in subsection (1) is given, the transferee, unless on an application made by a dissenting participant within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting participant under subsection (3) (whichever is the later) a court thinks fit to order otherwise, is entitled and bound to acquire those units —

- (a) on the terms which under the arrangement or contract the units of the approving participants are to be transferred to the transferee; or

- (b) if the offer contained 2 or more alternative sets of terms, on the terms which were specified in the offer as being applicable to dissenting participants.

[2/2009]

(3) Where a transferee has given notice to any dissenting participant of the subject trust that it desires to acquire the dissenting participant's units, the dissenting participant is entitled to require the transferee by a demand in writing served on the transferee, within one month from the date on which the notice was given, to supply the dissenting participant with a statement in writing of the names and addresses of all other dissenting participants as shown in the register of participants of the subject trust; and the transferee is not entitled or bound to acquire the units of the dissenting participants until 14 days after the posting of the statement of such names and addresses to the dissenting participant.

[2/2009]

(4) Where, pursuant to any such arrangement or contract, units in the subject trust are transferred to the transferee or its nominee and those units together with any other units in the subject trust held by the transferee at the date of the transfer comprise or include 90% of the total number of the units in the subject trust or of any class of those units, then —

- (a) the transferee must within one month from the date of the transfer (unless on a previous transfer pursuant to the arrangement or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the participants of the subject trust holding the remaining units in, or the remaining units of that class of units in, the subject trust who have not assented to the arrangement or contract; and
- (b) any such participant may within 3 months from receiving the notice require the transferee to acquire the participant's units.

[2/2009]

(5) Where a participant has given notice under subsection (4)(b) with respect to any units, the transferee is entitled and bound to acquire those units —

- (a) on the terms on which under the arrangement or contract the units of the approving participants were transferred to it; or
- (b) on such other terms as are agreed or as the court on the application of either the transferee or the participant thinks fit to order.

[2/2009]

(6) Where a notice has been given by the transferee under subsection (1) and a court has not, on an application made by the dissenting participant, ordered to the contrary, the transferee must —

- (a) after the expiration of one month after the date on which the notice has been given;
- (b) after 14 days after a statement has been supplied to a dissenting participant under subsection (3); or
- (c) if an application to the court by the dissenting participant is then pending, after that application has been disposed of,

transmit a copy of the notice to the trustee of the subject trust together with an instrument of transfer executed on behalf of the participant by any person appointed by the transferee and on its own behalf by the transferee, and pay, allot or transfer to the trustee of the subject trust the amount or other consideration representing the price payable by the transferee for the units which by virtue of this section the transferee is entitled to acquire, and the trustee of the subject trust must thereupon register the transferee as the holder of those units.

[2/2009]

(7) Any sums received by the trustee of the subject trust under this section must be paid into a separate bank account, and any such sums and any other consideration so received must be held by that trustee in trust for the several persons who had held the units in respect of which they were respectively received.

[2/2009]

(8) Where any consideration other than cash is held in trust by the trustee of the subject trust for any person under this section, the trustee may, after the expiration of 2 years from, and must, before the expiration of 10 years from, the date on which such consideration was

allotted or transferred to the trustee, transfer such consideration to the Official Receiver.

[2/2009]

(9) The Official Receiver must sell or dispose of any consideration so received in such manner as he or she thinks fit and must deal with the proceeds of such sale or disposal in accordance with section 295B.

[2/2009]

(10) In determining the units in the subject trust already held by the transferee at the date of the offer under subsection (1) or the percentage of the total number of units in the subject trust or of any class of those units held by the transferee under subsection (4), units held or acquired —

- (a) by a nominee on behalf of the transferee;
- (b) where the transferee is a corporation, by its related corporation or by a nominee of the related corporation;
- (c) where the transferee is the trustee-manager of a business trust or the trustee of a real estate investment trust —
  - (i) by a person who controls more than 50% of the voting power in the business trust or real estate investment trust, or by a nominee of that person;
  - (ii) by the trustee-manager of the business trust on its own account, or by the manager for the real estate investment trust, or by a nominee of the trustee-manager or manager; or
  - (iii) by a related corporation of the trustee-manager for the business trust or the manager for the real estate investment trust or by a nominee of that related corporation; or
- (d) where the transferee is the trustee of a trust that is not a business trust or real estate investment trust, by a related corporation of the trustee (being a corporation) or by a nominee of that related corporation,

are treated as held or acquired by the transferee.

[2/2009]

(11) To avoid doubt, in this section —

- (a) a reference to a transferee (being the trustee of a trust) holding, acquiring or contracting to acquire units in another trust is a reference to the transferee's doing any of these as trustee of the firstmentioned trust; and
- (b) a reference to a transfer of units of a trust to a transferee (being the trustee of another trust) is a reference to such transfer of units to the transferee as trustee of that other trust.

[2/2009]

(12) The reference in subsection (1) to units already held by the transferee —

- (a) includes a reference to units which the transferee has contracted to acquire; but
- (b) excludes units which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder for no consideration and under seal or for no consideration other than a promise by the transferee to make the offer.

[2/2009]

(13) Where, during the period within which an offer for the transfer of units to the transferee can be approved, the transferee acquires or contracts to acquire any of the units whose transfer is involved but otherwise than by virtue of the approval of the offer, then the transferee may be treated for the purposes of this section as having acquired or contracted to acquire those units by virtue of the approval of the offer if, and only if —

- (a) the consideration for which the units are acquired or contracted to be acquired (called in this subsection the acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the time referred to in paragraph (a), no longer exceeds the consideration specified in those terms.

[2/2009]



(14) In this section and sections 295B and 295C —

“dissenting participant” includes a participant who has not assented to the arrangement or contract and any participant who has failed or refused to transfer the participant’s units to the transferee in accordance with the arrangement or contract;

“Official Receiver” has the meaning given by section 2(1) of the Insolvency, Restructuring and Dissolution Act 2018.

*[2/2009; 4/2017; 40/2018]*

### **Unclaimed money to be paid to Official Receiver**

**295B.**—(1) The Official Receiver who receives moneys arising from the proceeds of a sale or disposal under section 295A must place the moneys to the credit of a separate account to be entitled the Compulsory Acquisition of Scheme Account.

*[2/2009]*

(2) The interest arising from the investment of the moneys standing to the credit of the Compulsory Acquisition of Scheme Account must be paid into the Consolidated Fund.

*[2/2009]*

(3) If any person makes any demand for any money placed to the credit of the Compulsory Acquisition of Scheme Account, the Official Receiver, upon being satisfied that that person is entitled to the money, must authorise payment thereof to be made to that person out of that Account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to that person out of moneys made available by Parliament for the purpose.

*[2/2009]*

(4) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made pursuant to subsection (3) may appeal to a court which may confirm, disallow or vary the decision.

*[2/2009]*

(5) Where any unclaimed moneys paid to a person pursuant to subsection (3) are afterwards claimed by any other person, that other person is not entitled to any payment out of the Compulsory Acquisition of Scheme Account or out of the Consolidated Fund but

such other person may have recourse against the firstmentioned person to whom the unclaimed moneys have been paid.

[2/2009]

(6) Any unclaimed moneys paid to the credit of the Compulsory Acquisition of Scheme Account to the extent to which the unclaimed moneys have not been under this section paid out of that Account must, upon the lapse of 7 years from the date of the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund.

[2/2009]

### **Remedies in cases of oppression or injustice**

**295C.**—(1) Any participant of a real estate investment trust may apply to a court for an order under this section on the ground —

- (a) that the affairs of the trust are being conducted by the manager or trustee for the trust, or the powers of the directors of the manager or directors of the trustee for the trust are being exercised, in a manner oppressive to one or more of the participants of the trust including the applicant or in disregard of the applicant's or their interests as participants of the trust; or
- (b) that some act of the manager or trustee for the trust, carried out in its capacity as manager or trustee for the trust (as the case may be) has been done or is threatened or that some resolution of the participants of the trust or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the participants of the trust including the applicant.

[2/2009]

(2) If on such application the court is of the opinion that either of the grounds referred to in subsection (1) is established, the court may, with a view to bringing to an end to or remedying the matters complained of, make such order as it thinks fit and, without limiting the foregoing, the order may —

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;

- (b) regulate the conduct of the affairs of the manager or trustee for the trust in relation to the trust in future;
- (c) authorise civil proceedings against the directors of the manager or directors of the trustee for the trust to be brought in the name of or on behalf of all the participants of the trust as a whole by such person or persons and on such terms as the court may direct;
- (d) provide for the purchase of the units in the trust by other participants of the trust;
- (e) provide that the trust be wound up; or
- (f) provide that the costs and expenses of and incidental to the application for the order are to be raised and paid out of the property of the trust or to be borne and paid in such manner and by such persons as the court deems fit.

[2/2009]

(3) Where an order under this section makes any alteration in or addition to the trust deed of any trust, then, despite anything in any other provision of this Act but subject to the provisions of the order, the manager or trustee of the trust concerned does not have power, without the leave of the court, to make any further alteration in or addition to the trust deed that is inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection, the alterations or additions made by the order have the same effect as if duly made by special resolution of the participants of the trust.

[2/2009]

(4) A copy of any order made under this section must be lodged by the applicant with the Authority within 7 days after the making of the order.

[2/2009]

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues after conviction.

[2/2009]

(6) This section applies to a person who is not a participant of a trust but to whom units in the trust have been transmitted by operation of law as it applies to the participants of a trust; and references to a participant or participants are to be construed accordingly.

[2/2009]

*Subdivision (2A) — Voluntary transfer of business of approved trustee*

**Interpretation of this Subdivision**

**295D.** In this Subdivision, unless the context otherwise requires —

“approved trustee” means a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts;

“business” includes affairs, property, right, obligation and liability;

“Court” means the General Division of the High Court;

“debenture” has the meaning given by section 4(1) of the Companies Act 1967;

“property” includes property, right and power of every description;

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act 1967 and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means an approved trustee, or a public company which has applied or will be applying for the Authority’s approval under section 289(1) to act as an approved trustee, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Subdivision;

“transferor” means an approved trustee the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Subdivision.

[10/2013; 40/2019]

**Voluntary transfer of business**

**295E.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved trustee) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved trustee; and
- (c) the Court has approved the transfer.

[10/2013]

(2) Subsection (1) does not affect the right of an approved trustee to transfer the whole or any part of its business under any law.

[10/2013]

(3) The Authority may consent to a transfer under subsection (1)(a) if the Authority is satisfied that —

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

[10/2013]

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and provide a report on, the proposed transfer of a transferor's business (or any part thereof) under this Subdivision.

[10/2013]

(5) The remuneration and expenses of any person appointed under subsection (4) must be paid by the transferor and the transferee jointly and severally.

[10/2013]

(6) The Authority must serve a copy of any report provided under subsection (4) on the transferor and the transferee.

[10/2013]

(7) The Authority may require a person to provide, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the

discharge of its duties or functions, or the exercise of its powers, under this Subdivision.

[10/2013]

(8) Any person who —

- (a) without reasonable excuse, fails to comply with any requirement under subsection (7); or
- (b) in purported compliance with any requirement under subsection (7), knowingly or recklessly provides any information or document that 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 \$100,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

[10/2013]

(9) Where a person claims, before providing the Authority with any information or document that the person is required to provide under subsection (7), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under subsection (8).

[10/2013]

### **Approval of transfer**

**295F.**—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Subdivision.

[10/2013]

(2) Before making an application under subsection (1) —

- (a) the transferor must lodge with the Authority a report setting out such details of the transfer and provide such supporting documents as the Authority may specify;
- (b) the transferor must obtain the consent of the Authority under section 295E(1)(a);

- (c) the transferor and the transferee must, if they intend to serve on the participants of their respective collective investment schemes a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
- (e) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
- (f) unless the Court directs otherwise, the transferor and the transferee must serve on the participants of their respective collective investment schemes affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

[10/2013]

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

- (a) have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
- (b) may make any application to the Court in relation to the transfer.

[10/2013]

(4) The Court is not to approve the transfer if the Authority has not consented under section 295E(1)(a) to the transfer.

[10/2013]

(5) The Court may, after taking into consideration the views (if any) of the Authority on the transfer —

- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
- (b) refuse to approve the transfer.

[10/2013]

(6) If the transferee does not have the Authority's approval under section 289(1) to act as an approved trustee, the Court may approve the transfer on terms that the transfer takes effect only in the event of the transferee obtaining the Authority's approval under section 289(1) to act as an approved trustee.

[10/2013]

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) the provisions to be made for persons who are affected by the transfer;
- (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

[10/2013]

(8) Any order under subsection (7) may —

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to any property which is held by the transferor as trustee; and



- (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

[10/2013]

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order is transferred to and vests in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

[10/2013]

(10) No order under subsection (7) has any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

[10/2013]

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

[10/2013]

(12) Where an order is made under this section, the transferor and the transferee must each lodge within 7 days after the order is made —

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

[10/2013]

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection,

shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part of a day during which the offence continues after conviction.

[10/2013]

*Subdivision (3) — Prospectus requirements*

**Requirement for prospectus and profile statement, where relevant**

**296.**—(1) A person must not make an offer of units in a collective investment scheme unless the offer —

- (a) is made in or accompanied by a prospectus in respect of the offer —
  - (i) that is prepared in accordance with such requirements as the Authority may prescribe;
  - (ii) a copy of which, being one that has been signed in accordance with subsection (2A), is lodged with the Authority; and
  - (iii) that is registered by the Authority; and
- (b) complies with such requirements as the Authority may prescribe.

(1A) A person who lodges a preliminary document with the Authority is deemed to have lodged a prospectus with the Authority.

(1B) A preliminary document referred to in subsection (1A) must contain all information to be included in a prospectus other than such information as the Authority may prescribe.

(2) Despite subsection (1), an offer of units in a collective investment scheme may be made in or accompanied by an extract from, or an abridged version of, a prospectus (called in this Subdivision a profile statement), instead of a prospectus, if —

- (a) a prospectus is prepared in accordance with such requirements as may be prescribed under subsection (1)(a)(i) and the profile statement is prepared

in accordance with such requirements as may be prescribed;

- (b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (2A), are lodged with the Authority, and the prospectus is lodged no later than the profile statement;
- (c) the prospectus and profile statement are registered by the Authority;
- (d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and
- (e) the offer complies with such other requirements as may be prescribed.

(2A) The copy of a prospectus or profile statement lodged with the Authority must be signed —

- (a) where the person making the offer of units in a collective investment scheme is the responsible person for the scheme, by every director or equivalent person of the responsible person and every person who is named therein as a proposed director or an equivalent person of the responsible person; and
  - (b) where the person making the offer of units in a collective investment scheme is not the responsible person for the scheme —
    - (i) where the responsible person is controlled by —
      - (A) the person making the offer;
      - (B) one or more of the related parties of the person making the offer; or
      - (C) the person making the offer and one or more of that person's related parties,
- by the persons referred to in paragraph (a) and the persons referred to in sub-paragraph (ii)(A) or (B), as the case may be; and

(ii) in any other case —

(A) where that person is an entity, by every director or equivalent person of that entity; or

(B) where that person is an individual, by the individual or a person authorised by him or her in writing.

(2B) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a director or an equivalent person is satisfied if the copy is signed —

(a) by that director or equivalent person; or

(b) by a person who is authorised in writing by that director or equivalent person to sign on his or her behalf.

(2C) A requirement under subsection (2A) for the copy of a prospectus or profile statement to be signed by a person named therein as a proposed director or an equivalent person is satisfied if the copy is signed —

(a) by that proposed director or equivalent person; or

(b) by a person who is authorised in writing by that proposed director or equivalent person to sign on his or her behalf.

(3) A person must not make an offer of units in a collective investment scheme if that scheme has not been formed or does not exist.

(4) [*Deleted by Act 1 of 2005*]

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

(6) The Authority may register a prospectus or a profile statement on any day within the period prescribed by the Authority from the date of lodgment thereof with the Authority, unless —

- (a) the Authority gives to the person making the offer a notice of an opportunity to be heard under subsection (12);
- (b) the Authority gives a notice to the person making the offer of an extension, in which case, the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —
  - (i) register the prospectus or profile statement; or
  - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (12);
- (c) the person making the offer applies in writing to extend the period during which the prospectus or profile statement may be registered, in which case the Authority may, at any time up to and including the date on which the extended period ends —
  - (i) register the prospectus or profile statement; or
  - (ii) give the person making the offer a notice of an opportunity to be heard under subsection (12); or
- (d) the person making the offer gives a written notice to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority must not register the prospectus or profile statement.

[2/2009]

(6A) Where, after a notice of an opportunity to be heard has been given under subsection (6)(a), (b)(ii) or (c)(ii), the Authority decides not to refuse registration of the prospectus or profile statement, the Authority may proceed with the registration on such date as it considers appropriate, except that that date must not be earlier than such day from the date of lodgment of the prospectus or profile statement with the Authority as the Authority may prescribe.

[2/2009]

(6AA) For the purposes of subsections (6) and (6A), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.

[2/2009]

(6B) Where a prospectus lodged with the Authority is a preliminary document, the Authority must not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (2A) and which contains the information required to be included in a prospectus as prescribed under subsection (1)(a)(i), including such information which could be omitted from the preliminary document by virtue of subsection (1B), has been lodged with the Authority.

(6C) A person making an offer of units in a collective investment scheme may lodge any amendment to a prospectus or profile statement in respect of that offer at any time before, but not after, the registration of the prospectus or profile statement by the Authority.

(7) Subject to subsection (8) —

- (a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged is deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged; and
- (b) where any amendment to a profile statement is lodged, the profile statement is deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged.

(8) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended is deemed, for the purposes of subsection (6), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

(8A) An amendment to a prospectus or profile statement that is lodged is treated as part of the original prospectus or profile statement.

(9) The Authority may, for public information, publish —

- (a) a prospectus or profile statement lodged with the Authority under this section; and

(b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1), and for the purposes of this subsection, the person making the offer must provide the Authority with a copy of the prospectus or profile statement and, where applicable, the translation in such form or medium for publication as the Authority may require.

(10) The Authority must refuse to register a prospectus if —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under subsection (1)(a);
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;
- (d) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (2A);
- (e) any written consent of an expert to the issue of the prospectus required under section 249 (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (ea) any written consent of an issue manager to the issue of the prospectus required under section 249A(1) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (eb) any written consent of an underwriter to the issue of the prospectus required under section 249A(2) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or

- (f) the Authority is of the opinion that it is not in the public interest to do so.
- (11) The Authority must refuse to register a profile statement if —
- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;
  - (b) there is an omission from the profile statement of any information that is required to be included, or an inclusion in the profile statement of any information that is prohibited, by virtue of requirements prescribed under subsection (2)(a);
  - (c) the copy of the profile statement that is lodged with the Authority is not signed in accordance with subsection (2A);
  - (ca) any written consent of an expert to the issue of the profile statement required under section 249 (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
  - (cb) any written consent of an issue manager to the issue of the profile statement required under section 249A(1) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
  - (cc) any written consent of an underwriter to the issue of the profile statement required under section 249A(2) (as applied to this Subdivision by virtue of section 302), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
  - (d) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;
  - (e) the prospectus has not been registered by the Authority; or
  - (f) the Authority is of the opinion that it is not in the public interest to do so.



(12) The Authority must not refuse to register a prospectus under subsection (10) or a profile statement under subsection (11) without giving the person making the offer an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

(13) Any person making an offer may, within 30 days after the person is notified that the Authority has refused to register a prospectus or profile statement to which that person's offer relates under subsection (10) or (11), appeal to the Minister whose decision is final.

(14) If —

- (a) a prospectus or profile statement is issued, circulated or distributed before it has been registered by the Authority; or
- (b) an application to subscribe for or purchase units in a collective investment scheme is accepted, or units in a collective investment scheme are issued or sold, before a prospectus and, where applicable, profile statement, in respect of the units has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

- (c) the issue, circulation or distribution of the prospectus or profile statement;
- (d) the acceptance of the application to subscribe for or purchase the units; or
- (e) the issue or sale of the units,

as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

(14A) For the purposes of subsections (10)(a) and (11)(a), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(15) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide for penalties not exceeding a fine of \$50,000.

### **Requirement for product highlights sheet, where relevant**

**296A.**—(1) A person must not make an offer of units in a collective investment scheme, being an offer that is made in or accompanied by a prospectus or profile statement that complies with section 296, unless the prospectus or profile statement is accompanied by a product highlights sheet in respect of the offer —

- (a) that complies with such requirements as the Authority may prescribe by regulations made under section 341; and
- (b) a copy of which is lodged with the Authority.

[34/2012]

(2) A person must not publish or disseminate, whether in Singapore or elsewhere, any document relating to any offer or intended offer of units in a collective investment scheme or proposed collective investment scheme, being an offer that is, or an intended offer that will be, made in or accompanied by a prospectus or profile statement that complies with section 296, if the document resembles or may

otherwise be confused with a product highlights sheet, unless the person is required to do so —

- (a) under any written law or rule of law, or by any court, in Singapore;
- (b) under the laws and practices of, or by any court in, any foreign jurisdiction; or
- (c) by any listing rules or other requirements of any approved exchange or overseas exchange.

[34/2012; 4/2017]

(3) The Authority may, for public information, publish —

- (a) a product highlights sheet lodged with the Authority under this section; and
- (b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1).

[34/2012]

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(5) Without affecting section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons, any prospectus or profile statement, or any units in a collective investment scheme or proposed collective investment scheme, from any provision of this section, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(6) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any person, prospectus or profile statement, or any units in a collective investment scheme or proposed collective investment scheme, from any provision of this section, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(7) It is not necessary to publish any exemption granted under subsection (6) in the *Gazette*.

[34/2012]

(8) Every person who is granted an exemption under subsection (5), or who wishes to rely on an exemption granted under that subsection, must satisfy every condition or restriction imposed under that subsection for the grant of the exemption.

[34/2012]

(9) Every person who is granted an exemption under subsection (6), or who wishes to rely on an exemption granted under that subsection, must, for the duration of the exemption, satisfy every condition or restriction imposed under that subsection for the grant of the exemption.

[34/2012]

(10) Any person who contravenes subsection (8) or (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Stop order for prospectus and profile statement**

**297.**—(1) If a prospectus has been registered and —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement;
- (b) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under section 296;
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act; or
- (d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of units in a collective

investment scheme to which the prospectus relates, direct that no or no further units in the scheme be issued or sold.

- (2) If a profile statement has been registered and —
- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement;
  - (b) there is an omission from the profile statement of any information that is required to be included, or an inclusion in the profile statement of any information that is prohibited, by virtue of requirements prescribed under section 296;
  - (c) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act; or
  - (d) the Authority is of the opinion that it is in the public interest to do so,

the Authority may by a written order (called in this section a stop order) served on the person making the offer of units in a collective investment scheme to which the profile statement relates, direct that no or no further units in the scheme be issued or sold.

- (2A) If —
- (a) a prospectus or a profile statement has been registered;
  - (b) the prospectus or profile statement relates to units in a collective investment scheme recognised under section 287; and
  - (c) the Authority is of the opinion that it is necessary to stop the person making the offer of units in the scheme from issuing or selling units in the scheme to give effect to an arrangement relating to cross-border offers of collective investment schemes to which Singapore or the Authority is a party,

the Authority may serve a written order (called in this section a stop order) on the person making the offer of units in the scheme directing that no or no further units in the scheme be issued or sold.

[4/2017]

(2B) The Authority must not serve a stop order under subsection (1), (2) or (2A) if —

- (a) any of the units in a collective investment scheme to which the prospectus or profile statement relates —
  - (i) has been issued or sold; and
  - (ii) has been listed for quotation on an approved exchange; and
- (b) trading in any of the units in the collective investment scheme mentioned in paragraph (a) has commenced.

[4/2017]

(3) The Authority must not serve a stop order under subsection (1), (2) or (2A) without giving the person making the offer of units in the collective investment scheme an opportunity to be heard, except that an opportunity to be heard need not be given if the stop order is served on the ground that it is in the public interest to do so on the basis of any of the following circumstances:

- (a) the person making the offer (being an entity), the responsible person or the collective investment scheme itself, is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person making the offer (being an entity), the responsible person or the collective investment scheme.

[4/2017]

(4) Where applications for units in a collective investment scheme have been made prior to the service of a stop order, and —

- (a) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —

(i) where units in the scheme have not been issued to the applicants, the applications are deemed to have been withdrawn and cancelled; or

(ii) where units in the scheme have been issued to the applicants, the issue of the units is deemed to be void,

and the person making the offer of units in the scheme must, within 7 days from the date of the stop order, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to that person, its agent, or any person through whom the applicant has applied for the units; or

(b) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by written notice issue such directions to the person making the offer of units in the scheme as it deems fit, including a direction that the person provide the applicants with an option, on such terms as the Authority may approve, to obtain from that person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(5) In determining whether to issue a direction under subsection (4) to the person making the offer of units in the collective investment scheme to refund the contributions of the applicants, the Authority must consider whether the responsible person for the scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

(a) whether a significant amount of the contributions of the participants has been invested;

(b) the liquidity of the property of the scheme; and

(c) the penalties (if any) payable for liquidating the property.

(6) It is not necessary to publish any direction issued under subsection (4) in the *Gazette*.

[34/2012]

(7) If the Authority is of the opinion that any delay in serving a stop order pending the hearing required under subsection (3) is not in the interests of the public, the Authority may, without giving the person making the offer of units in the collective investment scheme an opportunity to be heard, serve an interim stop order on such person directing that no or no further units in a collective investment scheme to which the prospectus or profile statement relates be issued or sold.

(8) An interim stop order, unless revoked, is in force —

(a) in a case where —

- (i) it is served during a hearing under subsection (3); or
- (ii) a hearing under subsection (3) is commenced while it is in force,

until the Authority makes an order under subsection (1), (2) or (2A); or

(b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

[4/2017]

(9) Subsection (4) does not apply where only an interim stop order has been served.

(10) Any person who fails to comply with a stop order served under subsection (1), (2) or (2A) or an interim stop order served under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) Any person who contravenes subsection (4), or any direction issued to the person under that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(12) For the purposes of subsections (1)(a) and (2)(a), any reference to a statement includes a reference to any information



presented, regardless of whether such information is in text or otherwise.

### **Lodging supplementary document or replacement document**

**298.**—(1) If, after a prospectus or profile statement is registered but before the close of the offer of units in a collective investment scheme, or the expiration of 12 months from the date of registration of the prospectus by the Authority, whichever is earlier, the person making that offer becomes aware of —

- (a) a false or misleading statement in the prospectus or profile statement;
- (b) an omission from the prospectus or profile statement of any information that should have been included in it by requirements prescribed under section 296; or
- (c) a new circumstance that —
  - (i) has arisen since the prospectus or profile statement was lodged with the Authority; and
  - (ii) would have been required under this Act to be included in the prospectus or profile statement, if it had arisen before the prospectus or the profile statement (as the case may be) was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (called in this section a supplementary or replacement document, as the case may be), with the Authority.

(2) If, after a prospectus or profile statement is registered but before the close of the offer of units in a collective investment scheme, or the expiration of 12 months from the registration of the prospectus by the Authority, whichever is earlier, the person making that offer wishes to update any information in a prospectus or profile statement and the person declares in writing to the Authority that none of the situations set out in subsection (1) apply at that time, the person may lodge a supplementary or replacement document with the Authority.

(3) At the beginning of a supplementary document, there must be —

- (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;
- (b) an identification of the prospectus or profile statement it supplements;
- (c) an identification of any previous supplementary document lodged with the Authority in relation to the offer; and
- (d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document in relation to the offer.

(4) At the beginning of a replacement document, there must be —

- (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and
- (b) an identification of the prospectus or profile statement it replaces.

(5) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

(6) The person making the offer of units in a collective investment scheme must take reasonable steps —

- (a) to inform potential investors of the lodgment of any supplementary document or replacement document under subsection (1); and
- (b) to make available to them the supplementary document or replacement document.

(7) For the purposes of the application of this Division to events that occur after the lodgment of a supplementary document —

- (a) where the supplementary document is a supplementary prospectus, the prospectus in relation to the offer is taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus in relation to the offer; and

- (b) where the supplementary document is a supplementary profile statement, the profile statement in relation to the offer is taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

(8) [*Deleted by Act 1 of 2005*]

(9) For the purposes of the application of this Division to events that occur after the lodgment of the replacement document —

- (a) where the replacement document is a replacement prospectus, the prospectus in relation to the offer is taken to be the replacement prospectus; and
- (b) where the replacement document is a replacement profile statement, the profile statement in relation to the offer is taken to be the replacement profile statement.

(10) Where, prior to the lodgment of the supplementary document or replacement document under subsection (1), applications have been made under the original prospectus or profile statement for units in a collective investment scheme, the person making the offer of units in the scheme —

(a) must —

- (i) within 2 days (excluding any Saturday, Sunday or public holiday) from the date of lodgment of the supplementary document or replacement document, give the applicants written notice on how to obtain, or arrange to receive, a copy of the supplementary document or replacement document, as the case may be; and
- (ii) take all reasonable steps to make available within a reasonable period the supplementary document or replacement document (as the case may be) to the applicants who have indicated that they wish to obtain, or who have arranged to receive, a copy of the supplementary document or replacement document; or

(b) must, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be.

(11) Any person who contravenes subsection (3), (4), (5) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(12) Any person who contravenes subsection (10) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(13) For the purposes of subsection (1)(a), the reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

### **Duration of validity of prospectus and profile statement**

**299.**—(1) A person must not make an offer of units in a collective investment scheme, or issue or sell any units in a collective investment scheme, on the basis of a prospectus or profile statement after the expiration of 12 months from the date of registration by the Authority of the prospectus in relation to such offer, issue or sale.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(3) An issue or a sale of units in a collective investment scheme that is made in contravention of subsection (1) is not, by reason only of that fact, voidable or void.

**Restrictions on advertisements, etc.**

**300.**—(1) If a prospectus is required for an offer, or intended offer of units in a collective investment scheme or proposed collective investment scheme, a person must not —

- (a) advertise the offer or intended offer; or
- (b) publish a statement that —
  - (i) directly or indirectly refers to the offer or intended offer; or
  - (ii) is reasonably likely to induce people to subscribe for or purchase the units,

unless the advertisement or publication is authorised by this section.

(2) In determining whether a statement —

- (a) indirectly refers to an offer or intended offer; or
- (b) is reasonably likely to induce people to subscribe for or purchase units in a collective investment scheme,

regard must be had to whether the statement —

- (c) forms part of the normal advertising of an entity's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and
- (d) is likely to encourage investment decisions to be made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

(2A) Despite subsection (3A), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to institutional investors, relevant persons as defined in section 305(5) and persons to whom an offer referred to in section 305(2) is to be made without contravening subsection (1), if —

- (a) the front page of the preliminary document contains —
- (i) the following statement:

“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Monetary Authority of Singapore.”;
  - (ii) a statement that a person to whom a copy of the preliminary document has been issued must not circulate it to any other person; and
  - (iii) a statement in bold lettering that no offer or agreement may be made on the basis of the preliminary document to purchase or subscribe for any units in the collective investment scheme to which the preliminary document relates;
- (b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer of units in the collective investment scheme to which the preliminary document relates, or the acceptance of such an offer by any person; and
- (c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

(2B) Despite subsection (3A), a person does not contravene subsection (1) —

- (a) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 305(5) or persons to whom an offer referred to in section 305(2) is to be made; or

- (b) by presenting oral or written material on matters contained in a prospectus, profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of units in a collective investment scheme, before the prospectus or profile statement is registered by the Authority, for the sole purpose of equipping any of the following persons with knowledge of the collective investment scheme in order to enable the person to carry on the regulated activity of dealing in capital markets products that are units in a collective investment scheme, or to provide any financial advisory service, in relation to the units in the collective investment scheme:
- (i) a person licensed under this Act in respect of dealing in capital markets products that are units in a collective investment scheme;
  - (ii) an exempt person;
  - (iii) a person who is a representative in respect of dealing in capital markets products that are units in a collective investment scheme under this Act;
  - (iv) a representative of an exempt person;
  - (v) a person licensed under the Financial Advisers Act 2001 in respect of marketing of collective investment schemes;
  - (vi) an exempt financial adviser;
  - (vii) a person who is a representative in respect of marketing of collective investment schemes under the Financial Advisers Act 2001;
  - (viii) a representative of an exempt financial adviser.

[34/2012; 4/2017]

(2C) [Deleted by Act 34 of 2012]

(3) To avoid doubt, a person may disseminate either or both of the following without contravening subsection (1):

- (a) a prospectus or profile statement that has been registered by the Authority under section 296;

- (b) a product highlights sheet in respect of which section 296A(1)(a) and (b) has been complied with, and which is disseminated with a prospectus or profile statement that has been registered by the Authority under section 296.

[34/2012; 4/2017]

(3A) Before a prospectus or profile statement is registered, an advertisement or a publication does not contravene subsection (1) if it contains only the following:

- (a) a statement that identifies the person making the offer, the responsible person for the collective investment scheme and, where the collective investment scheme is not a corporation, the collective investment scheme;
- (b) a statement that a prospectus or profile statement for the offer will be made available when the offer is made;
- (c) a statement that anyone wishing to acquire the units in the collective investment scheme will need to make an application in the manner set out in the prospectus or profile statement;
- (d) a statement on how to obtain, or arrange to receive, a copy of the prospectus or profile statement; and
- (e) the investment focus of the collective investment scheme.

(3B) To satisfy subsection (3A), the advertisement or publication must include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the information referred to in paragraphs (d) and (e).

(3C) After a prospectus or profile statement is registered with the Authority, an advertisement or a publication does not contravene subsection (1) if it complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(4) An advertisement or publication does not contravene subsection (1) if it —



- (a) consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, made by any person, provided that the disclosure, notice or report complies with such requirements as the Authority may prescribe;
- (aa) consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, provided that the notice or report complies with such requirements as the Authority may prescribe, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;
- (b) consists solely of a report about the collective investment scheme or proposed collective investment scheme that is issued pursuant to this Act and the Code on Collective Investment Schemes;
- (ba) consists solely of a statement made by the person making the offer or the responsible person that a prospectus or profile statement in respect of the offer or intended offer has been lodged with the Authority;
- (c) is a news report, or a genuine comment, by a person other than a person referred to in paragraph (d)(i), (ii), (iii) or (iv), in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating to —
  - (i) a prospectus or profile statement that has been lodged with the Authority or information contained in such a prospectus or profile statement;
  - (ii) a disclosure, notice or report referred to in paragraph (a);

- (iii) a notice, report, presentation, meeting, proposed meeting, general meeting or proposed general meeting referred to in paragraph (aa);
  - (iv) a report referred to in paragraph (b); or
  - (v) a product highlights sheet;
- (d) is a report about the units in the collective investment scheme which are the subject of the offer or intended offer, published by someone who is not —
- (i) the person making the offer, the responsible person for the scheme, its agent or distributor;
  - (ii) a director or an equivalent person of the person making the offer or the responsible person for the scheme;
  - (iii) a person who has an interest in the success of the issue or sale of the units; or
  - (iv) a person acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii);
- (e) is a disclosure, notice, report or publication of a description prescribed by the Authority, and such other conditions as the Authority may prescribe are satisfied; or
- (f) is a publication made by the person making the offer or the responsible person for the scheme solely to correct or provide clarification on any erroneous or inaccurate information or comment contained in —
- (i) an earlier news report or a genuine comment referred to in paragraph (c); or

- (ii) an earlier publication published in the ordinary course of business of publishing a newspaper, periodical or magazine, or of broadcasting by radio, television or any other means of broadcasting or communication, referred to in subsection (5),

provided that the firstmentioned publication does not contain any material information that is not included in the prospectus.

[2/2009; 34/2012; 4/2017]

(5) A person does not contravene subsection (1) if —

(a) the person publishes an advertisement or publication in the ordinary course of a business of —

- (i) publishing a newspaper, periodical or magazine; or
- (ii) broadcasting by radio, television, or any other means of broadcasting or communication; and

(b) the person did not know, and had no reason to suspect, that its publication would constitute a contravention of subsection (1).

(6) Subsection (4)(c) and (d) does not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(7) Any person who contravenes subsection (1) or who knowingly authorises or permits the publication or dissemination of any advertisement or statement mentioned in that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(8) This section does not affect any liability that a person has under any other law.

(9) The Authority may exempt any person or class of persons from this section, subject to such conditions as the Authority may determine.

(10) Any person who contravenes any of the conditions under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(11) For the purposes of this section, any reference to publishing a statement includes a reference to making a statement, whether oral or written, which is reasonably likely to be published.

(12) For the purposes of subsections (1) and (2), any reference to a statement includes a reference to any information presented, regardless of whether such information is in text or otherwise.

(13) In subsection (2B) —

“exempt financial adviser” and “financial advisory service”  
have the meanings given by section 2(1) of the Financial  
Advisers Act 2001;

“representative” —

- (a) in relation to dealing in capital markets products that are units in a collective investment scheme under this Act or an exempt person, has the meaning given by section 2(1); or
- (b) in relation to marketing of collective investment schemes under the Financial Advisers Act 2001 or an exempt financial adviser, has the meaning given by section 2(1) of that Act.

[34/2012; 4/2017]

### **Issue of units where prospectus indicates application to list on approved exchange**

**301.**—(1) Where a prospectus states or implies that application has been or will be made for permission for the units in a collective

investment scheme offered thereby to be listed for quotation on any approved exchange, and —

- (a) the permission is not applied for in the form required by the approved exchange within 3 days from the date of the issue of the prospectus; or
- (b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the approved exchange,

then —

- (c) any issue whenever made of units made on an application pursuant to the prospectus is void; and
- (d) any person who continues to issue such units after the period specified in paragraph (a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), applications for units in the collective investment scheme have been made and —

- (a) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —
  - (i) in a case where units in the scheme have not been issued to the applicants, the responsible person for the scheme must treat such applications as having been withdrawn; or

- (ii) in a case where units in the scheme have been issued to the applicants, the issue of the units is deemed to be void,

and the responsible person must within 7 days after the period specified in subsection (1)(a) or (b), whichever is applicable, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units; or

- (b) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by written notice issue such directions to the responsible person for the scheme as it deems fit, including a direction that the responsible person provide the applicants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2)(b) to the responsible person to refund the contributions of the applicants, the Authority must consider whether the responsible person for the collective investment scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

- (a) whether a significant amount of the contributions of the participants has been invested;
- (b) the liquidity of the property of the scheme; and
- (c) the penalties (if any) payable for liquidating the property.

(4) Any responsible person who contravenes subsection (2) or any of the directions issued under that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not

exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(5) Any responsible person to whom a notice is given under subsection (2) must comply with such direction as may be contained in the notice.

(6) It is not necessary to publish any direction issued under subsection (2) in the *Gazette*.

[34/2012]

(7) All moneys received from applicants as payment for the units, including contributions to the scheme and charges which the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units, must be kept in a separate bank account so long as the responsible person for the collective investment scheme may become liable to repay it under subsection (2).

(8) Any responsible person for a scheme which is not in compliance with subsection (7) and, where the scheme is a corporation, every officer thereof, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(9) Where the approved exchange has, within the period specified in subsection (1)(b), granted permission subject to compliance with such requirements as may be specified by the approved exchange, permission is deemed to have been granted by the approved exchange if —

- (a) in a case where the responsible person for the scheme is a corporation, the directors of the corporation; or

- (b) in a case where the responsible person for the scheme is not a corporation, such persons as may be required by the approved exchange,

have given to the approved exchange an undertaking in writing to comply with the requirements of the approved exchange.

[4/2017]

(10) Any person who fails to comply with any undertaking given to an approved exchange under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[4/2017]

(11) A person must not issue a prospectus inviting persons to subscribe for or purchase units in a collective investment scheme if it includes —

- (a) a false or misleading statement that permission has been granted for those units to be listed for quotation on, dealt in or quoted on any approved exchange; or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to listing for quotation on, dealing in or quoting the units on any approved exchange, or to any requirements of an approved exchange, unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the approved exchange within 3 days from the date of issue of the prospectus or the statement has been approved by the Authority for inclusion in the prospectus.

[4/2017]

(12) Any person who contravenes subsection (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.



(13) Where a prospectus contains a statement to the effect that the constituent documents for the collective investment scheme comply, or have been drawn so as to comply, with the requirements of any approved exchange, the prospectus is, unless the contrary intention appears from the prospectus, deemed for the purposes of subsection (11)(b) to be a prospectus that includes a statement that application has been, or will be, made for permission for the units to which the prospectus relates, to be listed for quotation on the approved exchange.

[4/2017]

### **Application of provisions relating to securities and securities-based derivatives contracts**

**302.**—(1) Sections 247, 249, 249A, 252, 253, 254 and 255 apply, with the necessary modifications, in relation to an offer of units in a collective investment scheme as they apply in relation to an offer of securities or securities-based derivatives contracts in Division 1 of this Part.

[4/2017]

(2) For the purposes of subsection (1) —

- (a) references in those sections to securities or securities-based derivatives contracts are to be read as references to units in a collective investment scheme; and
- (b) references in those sections to a person subscribing for, purchasing or acquiring securities or securities-based derivatives contracts are to be read as a person subscribing for, purchasing or acquiring units in a collective investment scheme.

[4/2017]

(3) For the purposes of subsection (1), any reference in sections 253 and 254 to an offer referred to in section 280 is to be read as a reference to an offer referred to in section 305C.

(4) For the purposes of subsection (1), any reference in sections 249, 249A, 253 and 254 to the issuer is to be read as a reference to the responsible person.

*Subdivision (4) — Exemptions***Issue or transfer for no consideration**

**302A.**—(1) Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (other than an offer of an option to subscribe for or purchase such units) if no consideration is or will be given for the issue or transfer of the units.

(2) Subdivisions (2) and (3) of this Division do not apply to an offer of an option to subscribe for or purchase units in a collective investment scheme if —

- (a) no consideration is or will be given for the issue or transfer of the option; and
- (b) no consideration is or will be given for the underlying units on the exercise of the option.

**Small offers**

**302B.**—(1) Subdivisions (2) and (3) of this Division do not apply to personal offers of units in a collective investment scheme by a person if —

- (a) the total amount raised by the person from such offers within any period of 12 months does not exceed —
  - (i) \$5 million (or its equivalent in a foreign currency); or
  - (ii) such other amount as the Authority may prescribe in substitution for the amount specified in sub-paragraph (i);
- (b) in respect of each offer, the person making the offer gives the person to whom the offer is made —
  - (i) the following statement in writing:

“This offer is made in reliance on the exemption under section 302B(1) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the

scheme is not authorised or recognised by the Authority.”; and

- (ii) a notification in writing that the units to which the offer (called in this sub-paragraph the initial offer) relates must not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —
  - (A) in compliance with Subdivisions (2) and (3) of this Division;
  - (B) in reliance on subsection (8)(c) or any other exemption under any provision of this Subdivision (other than this subsection); or
  - (C) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under this subsection;
- (c) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;
- (d) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the following persons:
  - (i) the holder of a capital markets services licence to deal in capital markets products that are units in a collective investment scheme;
  - (ii) an exempt person in respect of dealing in capital markets products that are units in a collective investment scheme;
  - (iii) a person licensed under the Financial Advisers Act 2001 in respect of marketing of collective investment schemes;

- (iv) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act 2001;
  - (v) a person who is licensed, approved, authorised or otherwise regulated under the laws, codes or other requirements of any foreign jurisdiction in respect of dealing in capital markets products that are units in a collective investment scheme or marketing of collective investment schemes; or
  - (vi) a person who is exempt from the laws, codes or other requirements mentioned in sub-paragraph (v) in respect of units in a collective investment scheme or marketing of collective investment schemes; and
- (e) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —
- (i) the prospectus has expired pursuant to section 299; or
  - (ii) the person making the offer has before making the offer informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(2) For the purposes of subsection (1)(b), where any notice, circular, material, publication or other document is issued in connection with the offer, the person making the offer is deemed to have given the statement and notification to the person to whom the offer is made in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

(3) For the purposes of subsection (1), a personal offer of units in a collective investment scheme is one that —

- (a) may only be accepted by the person to whom it is made; and
- (b) is made to a person who is likely to be interested in that offer, having regard to —

- (i) any previous contact before the date of the offer between the person making the offer and that person;
- (ii) any previous professional or other connection established before that date between the person making the offer and that person; or
- (iii) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the offer or any of the persons specified in subsection (1)(d)(i), (ii), (iii), (iv) and (v) that that person is interested in offers of that kind.

(4) In determining the amount raised by an offer of units in a collective investment scheme, the following must be included:

- (a) the amount payable for the units at the time when they are issued or sold;
- (b) if the units are issued partly-paid, any amount payable at a future time if a call is made;
- (c) if the units carry a right (by whatever name called) to be converted into other units or to acquire other units in a collective investment scheme, any amount payable on the exercise of the right to convert them into, or to acquire, other units in a collective investment scheme.

(5) In determining whether the amount raised by a person from offers within a period of 12 months exceeds the applicable amount specified in subsection (1)(a), each amount raised —

- (a) by that person from any offer of units in the same collective investment scheme; or
- (b) by that person or another person from any offer of units in a collective investment scheme, securities or securities-based derivatives contracts, which is a closely related offer,

(if any) within that period in reliance on the exemption under subsection (1) or section 272A(1) must be included.

[4/2017]

(6) Whether an offer is a closely related offer under subsection (5) is determined by considering such factors as the Authority may prescribe.

(7) For the purpose of this section, an offer of units in a collective investment scheme made by a person acting as an agent of another person is treated as an offer made by that other person.

(8) Where units acquired through an offer made in reliance on the exemption under subsection (1) (called in this subsection an initial offer) are subsequently sold by the person who acquired the units to another person, Subdivisions (2) and (3) of this Division apply to the offer from the firstmentioned person to the second-mentioned person which resulted in that sale, unless —

- (a) such offer is made in reliance on an exemption under any provision of this Subdivision (other than this section);
- (b) such offer is made in reliance on an exemption under subsection (1) and at least 6 months have elapsed from the date the units were acquired under the initial offer; or
- (c) such offer is one —
  - (i) that may be accepted only by the person to whom it is made;
  - (ii) that is made to a person who is likely to be interested in the offer having regard to —
    - (A) any previous contact before the date of the offer between the person making the initial offer and that person;
    - (B) any previous professional or other connection established before that date between the person making the initial offer and that person; or
    - (C) any previous indication (whether through statements made or actions carried out) before that date by that person to the person making the initial offer or any of the persons specified in subsection (1)(d)(i), (ii), (iii), (iv)

- and (v) that that person is interested in offers of that kind;
- (iii) in respect of which the firstmentioned person has given the second-mentioned person —
- (A) the following statement in writing:
- “This offer is made in reliance on the exemption under section 302B(8)(c) of the Securities and Futures Act 2001. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore and the scheme is not authorised or recognised by the Authority.”; and
- (B) a notification in writing that the units being offered must not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —
- (BA) in compliance with Subdivisions (2) and (3) of this Division;
- (BB) in reliance on this subsection or any other exemption under any provision of this Subdivision (other than subsection (1)); or
- (BC) where at least 6 months have elapsed from the date the units were acquired under the initial offer, in reliance on the exemption under subsection (1);
- (iv) that is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer; and
- (v) in respect of which no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or

fee for services rendered by any of the persons specified in subsection (1)(d)(i), (ii), (iii), (iv) and (v).

(9) Subsection (2) applies, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(c)(iii).

(10) In subsections (1)(c) and (8)(c)(iv), “advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

- (d) a document —
  - (i) purporting to describe the units in a collective investment scheme being offered; and
  - (ii) purporting to have been prepared for delivery to and review by persons to whom the offer is made so as to assist them in making an investment decision in respect of the units being offered;
- (e) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or
- (f) a publication which consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting.

[2/2009; 4/2017]



**Private placement**

**302C.**—(1) Subdivisions (2) and (3) of this Division do not apply to offers of units in a collective investment scheme that are made by a person if —

- (a) the offers are made to no more than 50 persons within any period of 12 months;
- (b) none of the offers is accompanied by an advertisement making an offer or calling attention to the offer or intended offer;
- (c) no selling or promotional expenses are paid or incurred in connection with each offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B(1)(d)(i), (ii), (iii), (iv) and (v); and
- (d) no prospectus in respect of any of the offers has been registered by the Authority or, where a prospectus has been registered —
  - (i) the prospectus has expired pursuant to section 299;  
or
  - (ii) the person making the offer has before making the offer —
    - (A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and
    - (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009]

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(a).

(3) In determining whether offers of units in a collective investment scheme by a person are made to no more than the applicable number

of persons specified in subsection (1)(a) within a period of 12 months, each person to whom —

- (a) an offer of units in the same collective investment scheme is made by the firstmentioned person; or
- (b) an offer of units in a collective investment scheme, securities or securities-based derivatives contracts is made by the firstmentioned person or another person where such offer is a closely related offer,

(if any) within that period in reliance on the exemption under this section or section 272B must be included.

[4/2017]

(4) Whether an offer is a closely related offer under subsection (3) is determined by considering such factors as the Authority may prescribe.

(5) For the purposes of subsection (1) —

- (a) an offer of units in a collective investment scheme to an entity or to a trustee is treated as an offer to a single person, provided that the entity or trust is not formed primarily for the purpose of acquiring the units which are the subject of the offer;
- (b) an offer of units in a collective investment scheme to an entity or to a trustee is treated as an offer to the equity owners, partners or members of that entity, or to the beneficiaries of the trust (as the case may be) if the entity or trust is formed primarily for the purpose of acquiring the units which are the subject of the offer;
- (c) an offer of units in a collective investment scheme to 2 or more persons who will own the units acquired as joint owners is treated as an offer to a single person;
- (d) an offer of units in a collective investment scheme to a person acting on behalf of another person (whether as an agent or otherwise) is treated as an offer made to that other person;

- (e) offers of units in a collective investment scheme made by a person as an agent of another person are treated as offers made by that other person;
- (f) where an offer of units in a collective investment scheme is made to a person with a view to another person acquiring an interest in those units by virtue of section 4, only the second-mentioned person is counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1)(a); and
- (g) where —
  - (i) an offer of units in a collective investment scheme is made to a person in reliance on the exemption under subsection (1) with a view to those units being subsequently offered for sale to another person; and
  - (ii) that subsequent offer —
    - (A) is not made in reliance on an exemption under any provision of this Subdivision; or
    - (B) is made in reliance on an exemption under subsection (1) or section 305C,both persons are counted for the purposes of determining whether offers of the units are made to no more than the applicable number of persons specified in subsection (1)(a).

(6) In subsection (1)(b), “advertisement” has the meaning given by section 302B(10).

### **Offer or invitation made under certain circumstances**

**303.**—(1) Subdivision (3) of this Division does not apply to an offer of units in a collective investment scheme if it is made in relation to units in a collective investment scheme (not being such excluded units in a scheme as the Authority may prescribe) that have been previously issued, are listed for quotation or quoted on an approved exchange, and are traded on the exchange.

[2/2009; 4/2017]

(2) Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme if it is an offer to enter into an underwriting agreement relating to units in a collective investment scheme.

(3) A person must not advertise an offer or intended offer of any units in a collective investment scheme referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the units, unless the advertisement or publication complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(4) Any person who contravenes subsection (3), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

### **Offer made to institutional investors**

**304.** Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (whether or not they have been previously issued) made to an institutional investor.

### **First sale of units acquired pursuant to section 304**

**304A.**—(1) Despite sections 302B, 302C, 303(1) and 305B but subject to subsection (2), where units in a collective investment scheme acquired pursuant to an offer made in reliance on the exemption under section 304 are first sold to any person other than an institutional investor, then Subdivisions (2) and (3) of this Division apply to the offer resulting in that sale.

[2/2009]

(2) Subsection (1) does not apply where the units in a collective investment scheme acquired are of the same class as, or can be converted into units of the same class as, other units in the scheme —

- (a) which are listed for quotation on an approved exchange; and
- (b) in respect of which any offer information statement, introductory document, unitholders' circular for a reverse take-over, document issued for the purposes of a trust scheme, or any other similar document approved by an approved exchange, was issued in connection with —
  - (i) an offer of those units in the scheme; or
  - (ii) the listing for quotation of those units in the scheme.

[4/2017]

### **Offer made to accredited investors and certain other persons**

**305.**—(1) Except to such extent and with such modifications as the Authority may prescribe, Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (called in this section a restricted scheme), where the offer is made to a relevant person, if the conditions in subsection (3) are satisfied.

(2) Except to such extent and with such modifications as the Authority may prescribe, Subdivisions (2) and (3) of this Division do not apply to an offer of units in a collective investment scheme (also called in this section a restricted scheme) to a person who acquires the units as principal if the offer is on terms that the units may only be acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of units in a collective investment scheme, securities, securities-based derivatives contracts or other assets, and if the conditions in subsection (3) are satisfied.

[4/2017]

- (3) The conditions referred to in subsections (1) and (2) are —
- (a) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;

- (b) no selling or promotional expenses are paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by any of the persons specified in section 302B(1)(d)(i), (ii), (iii), (iv), (v) and (vi); and
- (c) no prospectus in respect of the offer has been registered by the Authority or, where a prospectus has been registered —
  - (i) the prospectus has expired pursuant to section 299; or
  - (ii) the person making the offer has before making the offer —
    - (A) informed the Authority by written notice of its intent to make the offer in reliance on the exemption under this subsection; and
    - (B) taken reasonable steps to inform in writing the person to whom the offer is made that the offer is made in reliance on the exemption under this subsection.

[2/2009; 4/2017]

(4) [*Deleted by Act 2 of 2009*]

(5) In this section —

“advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message,

that is published in connection with an offer of units in a collective investment scheme, but does not include —

- (d) an information memorandum;
- (e) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing

rules or other requirements of an approved exchange or overseas exchange, which is made by any person; or

- (f) a publication which consists solely of a notice or report of a meeting or proposed meeting of the participants of the collective investment scheme, or a general meeting or proposed general meeting of the person making the offer, the responsible person or any entity, or a presentation of oral or written material on matters so contained in the notice or report at the meeting or general meeting;

“information memorandum” means a document —

- (a) purporting to describe the units in a collective investment scheme being offered; and
- (b) purporting to have been prepared for delivery to and review by relevant persons and persons to whom an offer referred to in subsection (2) is to be made so as to assist them in making an investment decision in respect of the units being offered;

“relevant person” means —

- (a) an accredited investor;
- (b) a corporation the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor;
- (c) a trustee of a trust the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor;
- (d) an officer or equivalent person of the person making the offer (such person being an entity) or a spouse, parent, brother, sister, son or daughter of that officer or equivalent person; or

- (e) a spouse, parent, brother, sister, son or daughter of the person making the offer (such person being an individual).

[2/2009; 4/2017]

(6) Despite any requirement under section 99 or any regulations made thereunder that a person has to deal in capital markets products that are units in a collective investment scheme for the person's own account with or through a person prescribed by the Authority so that the firstmentioned person can qualify as an exempt person, a person who acquires units in a collective investment scheme under section 304 or this section for the person's own account without complying with such requirement is considered an exempt person even though the person does not comply with that requirement.

[4/2017]

(7) The Authority may, by order in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2).

### **First sale of units acquired pursuant to section 305**

**305A.**—(1) Despite sections 302B, 302C, 303(1) and 305B but subject to subsection (5), where units in a collective investment scheme acquired pursuant to an offer made in reliance on an exemption under section 305 are first sold to any person other than —

- (a) an institutional investor;
- (b) a relevant person as defined in section 305(5); or
- (c) any person pursuant to an offer referred to in section 305(2),

then Subdivisions (2) and (3) of this Division apply to the offer resulting in that sale.

[2/2009]

(2) Subject to subsection (5), securities of a corporation (other than a corporation that is an accredited investor) —

- (a) the sole business of which is to hold investments; and



- (b) the entire share capital of which is owned by one or more individuals each of whom is an accredited investor,

must not be transferred within 6 months after the corporation has acquired any units in a collective investment scheme pursuant to an offer made in reliance on an exemption under section 305, unless —

- (c) that transfer —
  - (i) is made only to institutional investors or relevant persons as defined in section 305(5); or
  - (ii) arises from an offer referred to in section 275(1A);
- (d) no consideration is or will be given for the transfer; or
- (e) the transfer is by operation of law.

[2/2009]

- (3) Subject to subsection (5), where —

- (a) the sole purpose of a trust (other than a trust the trustee of which is an accredited investor) is to hold investments; and
- (b) each beneficiary of the trust is an individual who is an accredited investor,

the beneficiaries' rights and interest (howsoever described) in the trust must not be transferred within 6 months after units in a collective investment scheme are acquired for the trust pursuant to an offer made in reliance on an exemption under section 305, unless —

- (c) that transfer —
  - (i) is made only to institutional investors or relevant persons as defined in section 305(5); or
  - (ii) arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of units in a collective investment scheme, securities, securities-based derivatives contracts or other assets;
- (d) no consideration is or will be given for the transfer; or

(e) the transfer is by operation of law.

[2/2009; 4/2017]

(4) To avoid doubt, the reference to beneficiaries in subsection (3) includes a reference to unitholders of a business trust and participants of a collective investment scheme.

(5) Subsections (1), (2) and (3) do not apply where the units in a collective investment scheme acquired are of the same class as other units in the scheme —

(a) which are listed for quotation on an approved exchange; and

(b) in respect of which any offer information statement, introductory document, unitholders' circular for a reverse take-over, document issued for the purposes of a trust scheme, or any other similar document approved by an approved exchange, was issued in connection with —

(i) an offer of those units in the scheme; or

(ii) the listing for quotation of those units in the scheme.

[4/2017]

### **Offer made using offer information statement**

**305B.**—(1) Subject to subsection (2), Subdivision (3) of this Division does not apply to an offer of units in a collective investment scheme whose units are listed for quotation on an approved exchange, whether by means of a rights issue or otherwise, if —

(a) an offer information statement relating to the offer which complies with such form and content requirements as the Authority may prescribe is lodged with the Authority; and

(b) either —

(i) the offer is made in or accompanied by the offer information statement referred to in paragraph (a); or

(ii) all the conditions in subsection (2A) are satisfied.

[2/2009; 4/2017]

(2) Subsection (1) only applies to an offer of units referred to in that subsection made within a period of 6 months from the date the offer information statement relating to that offer is lodged with the Authority.

[2/2009]

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

- (a) the offer is made using any automated teller machine or such other electronic means as the Authority may prescribe;
- (b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —
  - (i) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and
  - (ii) that the prospective subscriber or buyer should read the offer information statement before submitting an application,  
before enabling the prospective subscriber or buyer to submit any application to subscribe for or purchase units in the collective investment scheme; and
- (c) the person making the offer complies with such other requirements as the Authority may prescribe.

[2/2009]

(3) The Authority may, on the application of any person interested, modify the prescribed form and content of the offer information statement in such manner as is appropriate, subject to such conditions or restrictions as the Authority may prescribe.

(4) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as the Authority may prescribe apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

(5) For the purposes of subsection (4) —

- (a) a reference in sections 249 and 249A to the registration of the prospectus is to be read as a reference to the lodgment of the offer information statement; and
- (b) a reference in section 253 or 254 to any information or new circumstance required to be included in a prospectus is to be read as a reference to any information prescribed under subsection (1)(a).

(6) Where the written consent of an expert is required to be given under section 249 (as applied in relation to an offer information statement under subsection (4)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(7) Where the written consent of an issue manager or underwriter is required to be given under section 249A (as applied in relation to an offer information statement under subsection (4)), that written consent must be lodged with the Authority at the same time as the lodgment of the statement.

(8) A person must not advertise an offer or intended offer of any units in a collective investment scheme referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the units, unless the advertisement or publication complies with such requirements as the Authority may prescribe by regulations made under section 341.

[34/2012]

(9) Any person who contravenes subsection (8), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

**Making offer using automated teller machine or electronic means**

**305C.**—(1) Subject to subsection (3) and such requirements as the Authority may prescribe, a person making an offer of units in a collective investment scheme using —

- (a) any automated teller machine; or
- (b) such other electronic means as the Authority may prescribe,

is exempted from the requirement under section 296(1)(a) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 296(2) that the offer be made in or accompanied by a profile statement in respect of the offer.

(2) To avoid doubt, a prospectus which complies with all other requirements of section 296(1)(a) or, where applicable, a profile statement which complies with all other requirements of section 296(2) must still be prepared and issued in respect of any offer referred to in subsection (1).

(3) Subsection (1) does not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

- (a) how the prospective subscriber or buyer can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and
- (b) that the prospective subscriber or buyer should read the prospectus or, where applicable, profile statement before submitting an application,

before enabling the prospective subscriber or buyer to submit an application to subscribe for or purchase units.

**Power of Authority to exempt**

**306.**—(1) The Authority may exempt any person or class of persons, subject to such conditions as the Authority may determine, from complying with all or any of the provisions of this Division or

any regulations made thereunder in relation to an offer in respect of any unit or class of units.

(2) Any person who contravenes any of the conditions under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

(3) This Division does not apply in the case of the sale of any unit in a collective investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy in the ordinary course of the realisation of assets for the purposes of the sale.

### **Revocation of exemption**

**307.**—(1) Where the Authority considers that it is necessary in the interests of the public or for the protection of investors, it may revoke any exemption under this Subdivision (including an exemption granted under section 306(1)), subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation remains in effect unless it is withdrawn by the Authority.

(3) A revocation under this section is final and there is no appeal from the revocation.

### **Transactions under exempted offers subject to Division 2 of Part 12 of Companies Act 1967, Division 2 of Part 13 of the Variable Capital Companies Act 2018, and Part 12 of this Act**

**308.** To avoid doubt, it is declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part limits or diminishes any liability which any person may incur in respect of any relevant offence under Division 2 of Part 12 of the Companies Act 1967, Division 2 of Part 13 of the Variable Capital

Companies Act 2018, or Part 12 of this Act or any penalty, award of compensation or punishment in respect of any such offence.

[44/2018]

*Division 3 — Hawking of Securities,  
Securities-based Derivatives Contracts and  
Units in Collective Investment Scheme*

[4/2017]

**Securities hawking prohibited**

**309.**—(1) A person must not —

- (a) make an offer to any person of units in a collective investment scheme, securities or securities-based derivatives contracts for subscription or purchase, in the course of, or arising from, an unsolicited meeting with that other person; or
- (b) make an invitation to any person to subscribe for or purchase units in a collective investment scheme, securities or securities-based derivatives contracts, in the course of, or arising from, an unsolicited meeting with that other person.

[4/2017]

(2) Subsection (1) does not apply to any person who makes an offer or invitation in respect of units in a collective investment scheme, securities or securities-based derivatives contracts that does not need a prospectus by virtue of section 274, 275, 304 or 305.

[4/2017]

(3) The Authority may exempt —

- (a) any person or class of persons; or
- (b) any class or description of units in a collective investment scheme, securities or securities-based derivatives contracts,

from compliance with subsection (1), subject to such conditions as the Authority may determine.

[4/2017]

(4) Every person who acts, incites, causes or procures any person to act in contravention of subsection (1) 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 6 months or to both and, in the case of a second or subsequent offence, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) Where any person is convicted of having made an offer or invitation in contravention of subsection (1), the court before which the person is convicted may order that any contract made as a result of the offer or invitation is void and may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any units in a collective investment scheme, securities or securities-based derivatives contracts, as the case may be.

[4/2017]

(6) An appeal against any order made under subsection (5) and any consequential directions shall lie to the General Division of the High Court.

[40/2019]

(7) In this section —

- (a) “securities” has the meaning given by section 2 and also includes the securities of an entity or a business trust, whether the entity or business trust is in existence or is to be formed;
- (b) “securities-based derivatives contracts” has the meaning given by section 2 and also includes securities-based derivatives contracts of an entity or a business trust, whether the entity or business trust is in existence or is to be formed;
- (c) “unit”, in relation to a collective investment scheme, has the meaning given by section 2 and also includes units in a collective investment scheme, whether the collective investment scheme is in existence or is to be formed;
- (d) a reference to an offer or invitation in respect of securities, securities-based derivatives contracts or units in a collective investment scheme for subscription or



purchase includes an offer or invitation in respect of securities, securities-based derivatives contracts or units in a collective investment scheme (as the case may be) by way of barter or exchange.

[4/2017]

#### *Division 4 — Capital Markets Products*

### **Interpretation of this Division**

**309A.**—(1) In this Division, unless the context otherwise requires —

“issuer” means —

- (a) in relation to an offer of units in a collective investment scheme, the responsible person for the collective investment scheme; or
- (b) [*Deleted by Act 4 of 2017*]
- (c) in relation to an offer of any other capital markets products, the entity that issues or will issue the capital markets products being offered;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of any capital markets products;

“relevant person” means —

- (a) a holder of a capital markets services licence;
- (b) a person who is exempted under section 99(1)(a) or (b) from the requirement to hold a capital markets services licence;
- (c) a person licensed under the Financial Advisers Act 2001 in respect of advising on any investment product;
- (d) a person who is exempted under section 20(1)(a), (b), (c), (d) or (e) of the Financial Advisers Act 2001 from holding a financial adviser’s licence;

- (e) such other person as the Authority may prescribe by regulations made under section 341; or
- (f) a representative of any person referred to in paragraph (a), (b), (c), (d) or (e).

[34/2012; 4/2017]

(2) For the purposes of this Part, a person makes an offer of any capital markets products if, and only if, as principal —

- (a) the person makes (either personally or by an agent) an offer to any person in Singapore which upon acceptance would give rise to a contract for the issue or sale of those capital markets products by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale; or
- (b) the person invites (either personally or by an agent) any person in Singapore to make an offer which upon acceptance would give rise to a contract for the issue or sale of those capital markets products by the firstmentioned person or another person with whom the firstmentioned person has made arrangements for that issue or sale.

[34/2012]

(3) In subsection (2), “sale” includes any disposal for valuable consideration.

[34/2012]

(4) To avoid doubt, the obligations imposed by this Division in relation to any capital markets products are in addition to the obligations imposed under Divisions 1, 2 and 3 in relation to those capital markets products.

[34/2012]

### **Obligation of issuer to determine, and to notify approved exchange and relevant person of, classification of capital markets products**

**309B.**—(1) An issuer must not make an offer of any capital markets products unless —

- (a) the issuer has determined the classification of those capital markets products;
- (b) where those capital markets products are or will be listed for quotation or quoted on a market operated by an approved exchange, the issuer has notified the approved exchange in writing of the classification of those capital markets products; and
- (c) where those capital markets products are or will be offered through any relevant person, the issuer has notified that relevant person in writing of the classification of those capital markets products.

[34/2012]

(2) A relevant person must not make an offer of any capital markets products unless the relevant person has received a notification under subsection (1)(c) in respect of those capital markets products.

[34/2012]

(3) Where, after any notification has been given under subsection (1)(b) or (c) or this subsection in respect of any capital markets products, there is a change in the classification of those capital markets products, the issuer of those capital markets products must, within such time as the Authority may prescribe by regulations made under section 341 —

- (a) if those capital markets products are or will be listed for quotation or quoted on an approved exchange, notify the approved exchange in writing of the new classification of those capital markets products; and
- (b) if those capital markets products are or will be offered through any relevant person, notify that relevant person in writing of the new classification of those capital markets products.

[34/2012]

(4) Without affecting section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons from any provision of this section, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

[34/2012]

(5) Without affecting section 337(3) and (4), the Authority may, by written notice, exempt any person from any provision of this section, subject to such conditions or restrictions as the Authority may specify by written notice.

[34/2012]

(6) It is not necessary to publish any exemption granted under subsection (5) in the *Gazette*.

[34/2012]

(7) Every person who is granted an exemption under subsection (4) must satisfy every condition or restriction imposed on the person under that subsection.

[34/2012]

(8) Every person who is granted an exemption under subsection (5) must satisfy every condition or restriction imposed on the person under that subsection.

[34/2012]

(9) Any person who contravenes subsection (1), (2), (3), (7) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

(10) In this section —

“classification”, in relation to any capital markets products, means the classification of the capital markets products as either of the following:

- (a) prescribed capital markets products;
- (b) capital markets products other than prescribed capital markets products;

“prescribed capital markets products” means any capital markets products that belong to any class of capital markets products that is prescribed by the Authority, by regulations made under section 341, for the purposes of this definition.

[34/2012]

**Use of term “capital protected” or “principal protected”**

**309C.**—(1) A person must not, when describing or referring to any capital markets products which are, will be or have been the subject of an offer or intended offer, do either or both of the following:

- (a) use the term “capital protected” or any of its derivatives in any language in the name or description or any representation of those capital markets products, or within any prospectus relating to those capital markets products;
- (b) use the term “principal protected” or any of its derivatives in any language in the name or description or any representation of those capital markets products, or within any prospectus relating to those capital markets products.

[34/2012]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

**Use of term “product highlights sheet”**

**309D.**—(1) A person must not, when describing or referring to any publication in respect of any offer or intended offer of any capital markets products, use the term “product highlights sheet” or any of its derivatives in any language in the name or description or any representation of that publication, unless —

- (a) that publication is a product highlights sheet —
  - (i) in respect of an offer that is made in or accompanied by a prospectus or profile statement that complies with section 240; and
  - (ii) in respect of which section 240AA(1)(a) and (b) has been complied with;

- (b) that publication is a product highlights sheet —
- (i) in respect of an offer that is made in or accompanied by a prospectus or profile statement that complies with section 296; and
  - (ii) in respect of which section 296A(1)(a) and (b) has been complied with;
- (c) that person belongs to any class of persons declared by the Authority, by order in the *Gazette*, to be a class of persons who may, when describing or referring to any publication in respect of any offer or intended offer of such capital markets products as the Authority may specify in the order, use that term or any of its derivatives in any language in the name or description or any representation of that publication; or
- (d) the Authority has given consent in writing to that person to use that term or any of its derivatives in any language, when describing or referring to any publication in respect of any offer or intended offer of such capital markets products as the Authority may specify in writing, in the name or description or any representation of that publication.

[34/2012]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

[34/2012]

## PART 14

### APPEALS

#### Appeals to Minister

**310.**—(1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the

Authority on appeal, or give such directions in the matter as he or she thinks fit, and the decision of the Minister is final.

(2) Except for an appeal under Part 2, 2A, 3, 3A or 6AA, where an appeal is made to the Minister under this Act, the Minister must, within 28 days of his or her receipt of the appeal, constitute an Appeal Advisory Committee comprising not less than 3 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

*[34/2012; 4/2017]*

(3) The Appeal Advisory Committee must submit to the Minister a written report on the appeal referred to it under subsection (2), and may make such recommendations as it thinks fit.

(4) The Minister must consider the report submitted under subsection (3) in making his or her decision under this section but he or she is not bound by the recommendations in the report.

### **Appeal Advisory Committees**

**311.**—(1) To enable the Appeal Advisory Committees to be constituted under section 310, the Minister must appoint a panel (called in this Part the Appeal Advisory Panel) comprising such members from the financial services industry, and the public and private sectors, as the Minister may appoint.

(2) A member of the Appeal Advisory Panel must be appointed for a term of not more than 2 years and is eligible for re-appointment.

(3) An Appeal Advisory Committee has the power, in the exercise of its functions, to inquire into any matter or thing relating to the securities and derivatives industry or to financial benchmarks and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

*[34/2012; 4/2017]*

(4) Nothing in subsection (3) compels the production by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, of a document or material containing a privileged communication made by or to him or her in

that capacity or authorise the taking of possession of any such document or material which is in his or her possession.

[34/2012]

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act 1893, who refuses to produce any document or other material referred to in subsection (4) is nevertheless obliged to give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

[34/2012]

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —

- (a) is deemed to be a public servant for the purposes of the Penal Code 1871; and
- (b) in case of any suit or legal proceedings brought against him or her for any act done or omitted to be done in the execution of his or her duty under the provisions of this Act, has the like protection and privileges as are by law given to a Judge in the execution of his or her office.

(7) Every Appeal Advisory Committee must have regard to the interests of the public, the protection of investors and the safeguarding of sources of information.

(8) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and is not bound by the rules of evidence.

### **Disclosure of information**

**312.** Nothing in this Act requires the Minister or any public servant to disclose facts which he or she considers to be against the interest of the public to disclose.

### **Regulations for purposes of this Part**

**313.—**(1) The Minister may make regulations for the purposes and provisions of this Part and for the due administration thereof.



(2) Without limiting subsection (1), the Minister may make regulations for or with respect to —

- (a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;
- (b) the form and manner in which an appeal to the Minister under this Act must be made;
- (c) the fees to be paid in respect of any appeal made to the Minister under this Act, including the refund or remission, whether in whole or in part, of such fees;
- (d) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and
- (e) all matters and things which by this Part are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to any provision of this Part.

## PART 15

### MISCELLANEOUS

**314.** [*Repealed by Act 1 of 2005*]

**315.** [*Repealed by Act 1 of 2005*]

#### **Opportunity to be heard**

**316.** Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person must be given an opportunity to be heard.

#### **Records**

**317.**—(1) Without affecting sections 94, 99C, 101A(7) and (8), 123U and 123ZQ, the Authority must keep such records as it considers necessary, in such form as it thinks fit.

*[2/2009; 34/2012; 4/2017]*

- (2) Any person may, on payment of the prescribed fee —
- (a) inspect any records kept by the Authority under section 94, 99C, 123U or 123ZQ, any records kept or published by the Authority under section 101A(7) and (8) or any prospectus or profile statement lodged with the Authority under Part 13; or
  - (b) require a copy of or extract from any such record to be given or certified by the Authority.

[2/2009; 34/2012; 4/2017]

(3) A copy of or extract from any record lodged with or kept by the Authority certified to be a true copy or extract by the Authority is in any proceedings admissible as evidence of equal validity as the original record.

(4) In any legal proceedings a certificate by the Authority that a requirement of this Act specified in the certificate —

- (a) had or had not been complied with at a date or within a period specified in the certificate; or
- (b) had been complied with upon a date specified in the certificate but not before that date,

is prima facie evidence of the matters specified in the certificate.

(5) If the Authority is of the opinion that any record submitted to it —

- (a) contains any matter contrary to law;
- (b) by reason of any omission or misdescription has not been duly completed;
- (c) does not comply with the requirements of this Act; or
- (d) contains any error, alteration or erasure,

the Authority may refuse to register or receive the record and request that the record be appropriately amended or completed and resubmitted or that a fresh record be submitted in its place.

(6) Any party that is aggrieved by the refusal of the Authority to register or receive any record under subsection (5) may, within

30 days after it is notified of the decision of the Authority, appeal to the Minister whose decision is final.

(7) The Authority may, if it is of the opinion that it is no longer necessary or desirable to retain any record which has been microfilmed or converted to electronic form, destroy such record or otherwise arrange for such record to be disposed of in such manner as the Authority thinks fit.

### **Size, durability and legibility of records delivered to Authority**

**318.**—(1) For the purposes of securing that the records provided to or lodged with the Authority under this Act are of a standard size, durable and easily legible, the Authority may prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colour of lettering, or otherwise) as it considers appropriate; and different requirements may be so prescribed for different documents or classes of documents.

(2) Where the Authority is of the opinion that any record (whether an original or copy thereof) delivered to the Authority does not comply with such requirements prescribed under this section, the Authority may serve on any person by whom under that provision the record was required to be delivered (or if there are 2 or more such persons, may serve on any of them) a notice —

- (a) stating its opinion to that effect; and
- (b) indicating the requirements so prescribed with which the record has failed to comply.

(3) Where the Authority serves a notice under subsection (2) with respect to a record delivered under this Act, then, for the purposes of any provision of this Act which enables a penalty to be imposed in respect of any omission to deliver to the Authority such record (and, in particular, for the purposes of any such provision whereby a penalty may be imposed by reference to each day during which the omission continues) —

- (a) any duty imposed by that provision to deliver the record to the Authority is treated as not having been discharged; but

(b) no account is to be taken of any days falling within the period referred to in subsection (4).

(4) The period referred to in subsection (3)(b) is the period beginning on the day on which the record was delivered to the Authority as mentioned in subsection (2) and ending on the 14th day after the date of service of the notice under subsection (2).

(5) For the purposes of this section, any reference to delivering a record includes a reference to sending, forwarding, producing, providing, lodging or (in the case of a notice) giving the record.

### **Translation of instruments**

**318A.**—(1) Where a person submits or provides to or lodges with the Authority any book, application, return, report, prospectus, statement or other information or document under this Act (other than Subdivision (3) of Division 3 of Part 9) which is not in the English language, the person must, at the same time or at such other time as the Authority may permit, submit or provide or lodge with the Authority (as the case may be) an accurate translation thereof in the English language.

(2) Where a person is required to make available for inspection by the public, or any section thereof, any document, report, or other book under this Act which is not in the English language, the person must, at the same time or at such other time as the Authority may permit, make available for such inspection an accurate translation thereof in the English language.

(3) Where a person is required to maintain or keep any book under this Act and the book or any part thereof is not maintained or kept in the English language, the person must —

- (a) cause an accurate translation of that book or that part of the book in the English language to be made from time to time at intervals of not more than 7 days; and
- (b) maintain or keep the translation with the book for so long as the book is required under this Act to be maintained or kept.

(4) Subsections (1), (2) and (3) are subject to any express provision to the contrary in this Act or any regulations made under this Act.

(5) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(6) Where a person is charged with an offence under subsection (5), it is a defence for the person to prove that —

(a) the person had taken all reasonable steps to ensure that the translation that was submitted or provided or lodged with the Authority, made available for inspection, or maintained or kept (as the case may be) was accurate in the circumstances; and

(b) the person had believed on reasonable grounds that the translation was accurate.

(7) In subsections (1), (2) and (3), “Act” includes any direction made by the Authority under this Act.

### **Supply of magnetic tapes — exclusion of liability for errors or omissions**

**319.** Where the Authority provides information, whether in bulk or otherwise, to any person by way of magnetic tapes or by any electronic means, neither the Authority nor any of its officers or authorised agents involved in the provision of such information shall be liable for any loss or damage suffered by that person by reason of any error or omission of whatever nature appearing therein or however caused if made in good faith and in the ordinary course of the discharge of the duties of such officers or authorised agents.

### **Appointment of assistants**

**320.**—(1) Subject to subsection (1A), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power to make subsidiary legislation.

(1A) The Authority may, by notification in the *Gazette*, appoint one or more of its officers to exercise the power to grant an exemption to any person or in respect of any capital markets product, matter or transaction (not being an exemption granted to a class of persons or in respect of a class of capital markets products, matters or transactions) under a provision of this Act specified in the Fourth Schedule, or to revoke any such exemption.

(2) Any person appointed by the Authority under subsection (1) is deemed to be a public servant for the purposes of the Penal Code 1871.

### **Codes, guidelines, etc., by Authority**

**321.**—(1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines, policy statements, practice notes and no-action letters as it considers appropriate for providing guidance —

- (a) in furtherance of its regulatory objectives;
- (b) in relation to any matter relating to any of the functions of the Authority under any of the provisions of this Act; or
- (c) in relation to the operation of any of the provisions of this Act.

(2) The Authority may publish any such code, guideline, policy statement, practice note or no-action letter, and in such manner as it thinks fit.

(3) The Authority may revoke, vary, revise or amend the whole or any part of any code, guideline, policy statement, practice note or no-action letter issued under this section in such manner as it thinks fit.

(4) Where amendments are made under subsection (3) —

- (a) the other provisions of this section apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement, practice note or no-action letter; and

(b) any reference in this Act or any other written law to the code, guideline, policy statement, practice note or no-action letter however expressed is, unless the context otherwise requires, a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(5) A failure by any person to comply with any of the provisions of a code, guideline, policy statement or practice note issued under this section that applies to the person does not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(6) The issue by the Authority of a no-action letter does not of itself prevent the institution of any criminal proceedings against any person for a contravention of any provision of this Act.

(7) Any code, guideline, policy statement or practice note issued under this section —

(a) may be of general or specific application; and

(b) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(8) To avoid doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section is deemed not to be subsidiary legislation.

(9) In this section, a “no-action” letter means a letter written by the Authority to an applicant for such a letter to the effect that, if the facts are as represented by the applicant, the Authority will not institute proceedings against the applicant in respect of a particular state of affairs or particular conduct.

### **Power of Authority to publish information**

**322.**—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or section of the public or for

the protection of investors and in such form or manner as it thinks fit, publish —

- (a) any information relating to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a holder of a capital markets services licence, an exempt person, a representative, or an approved trustee for a collective investment scheme as defined in section 289;
- (aa) any information relating to an authorised benchmark administrator, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter, a representative of an authorised benchmark administrator, an exempt benchmark administrator, an authorised benchmark submitter, an exempt benchmark submitter or a designated benchmark submitter, or a person from whom any information or expression of opinion used in the determination of a designated benchmark was obtained; or
- (b) any other information which the Authority has acquired in the exercise of its functions or the performance of its duties under this Act.

[2/2009; 34/2012; 4/2017]

(2) Without limiting subsection (1), the Authority may publish information relating to —

- (a) the lapsing, revocation or suspension of the approval, licence, authorisation or exemption granted, or designation issued, to any person mentioned in subsection (1);
- (b) the making of a prohibition order against any person referred to in subsection (1);
- (c) the reprimand of any relevant person under section 334;
- (d) the removal of an officer of any person referred to in subsection (1);



- (e) the composition of any offence —
  - (i) under this Act committed by any person; or
  - (ii) under any other law (whether of Singapore or any territory or country outside Singapore) involving a person referred to in subsection (1);
- (f) any civil or criminal proceedings brought —
  - (i) under this Act against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or
  - (ii) under any other law, whether of Singapore or any territory or country outside Singapore, against any person referred to in subsection (1) and the outcome of such proceedings, including any settlement, whether in or out of court;
- (g) any disciplinary proceedings brought against any person referred to in subsection (1), by the Authority, an approved exchange, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house and the outcome of such proceedings; and
- (h) any other action as may have been taken by the Minister, the Authority, an approved exchange, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house against any person referred to in subsection (1).

[34/2012; 4/2017]

**323.** [Repealed by Act 24 of 2003]

**Power of court to prohibit payment or transfer of moneys, capital markets products, etc.**

**324.**—(1) A court may, on an application by the Authority, make one or more of the orders referred to in subsection (1A), where —

- (a) an investigation is being carried out in relation to any act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act;

- (b) a criminal proceeding has been instituted against a person for an offence under this Act; or
- (c) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (a) or (b) or this paragraph (called in this section the relevant person) is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of penalties, damages or compensation or otherwise, or to account for any capital markets products, or other property.

[34/2012; 4/2017]

(1A) The orders of court that may be made under subsection (1) are as follows:

- (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to the relevant person, or to another person at the direction or request of the relevant person;
- (b) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, capital markets products, or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person, from paying, transferring or otherwise parting with possession of all or any of the moneys, capital markets products, or other property, to the relevant person, or to another person at the direction or request of the relevant person;
- (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;

- (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of capital markets products, or documents of title to capital markets products, or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of capital markets products from a register in Singapore to a register outside Singapore);
- (e) an order appointing —
  - (i) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of the relevant person; or
  - (ii) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of the relevant person;
- (f) where the relevant person is an individual, an order requiring the relevant person to deliver up to the court his or her passport and such other documents as the court thinks fit;
- (g) where the relevant person is an individual, an order prohibiting the relevant person from leaving Singapore without the consent of the court.

[34/2012; 4/2017]

(2) Where an application is made to the court for any order referred to in subsection (1A), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, make any interim order as it thinks fit pending the determination of the application.

[34/2012]

(3) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court is not to require the Authority or any other person, as a condition of granting the order or interim order, to give any undertaking as to damages.

(4) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order.

(5) An order or interim order made under this section may be expressed to operate for a period specified in the order or interim order or until the order or interim order is rescinded.

(6) Any person who contravenes an order or interim order made by the court under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) Subsection (6) does not affect the powers of the court in relation to the punishment for contempt of court.

### **Power of court to make certain orders**

**325.**—(1) Where —

- (a) on the application of the Authority, it appears to the court that a person —
  - (i) has committed an offence under this Act;
  - (ii) has contravened any condition or restriction of a licence, or the business rules of an approved exchange, a licensed trade repository or an approved clearing house, or the listing rules of an approved exchange; or
  - (iii) is about to do an act with respect to dealing in capital markets products, administering a designated benchmark, or providing information in relation to a designated benchmark, that, if done, would be such an offence or contravention;
- (b) on the application of an approved exchange, it appears to the court that a person has contravened the business rules or listing rules of the approved exchange;
- (c) [*Deleted by Act 4 of 2017*]

- (d) on the application of an approved clearing house, it appears to the court that a person has contravened the business rules of the approved clearing house; or
- (e) on the application of a licensed trade repository, it appears to the court that a person has contravened the business rules of the licensed trade repository,

the court may, without affecting any orders it would be entitled to make otherwise than under this section, make any one or more of the orders specified in subsection (1A).

[34/2012; 4/2017]

(1A) The orders that may be made under subsection (1) are —

- (a) in the case of a persistent or continuing breach of this Act, of any condition or restriction of a licence, of any business rule of an approved exchange, a licensed trade repository or an approved clearing house, of any listing rule of an approved exchange, or of any condition or restriction imposed on an authorised benchmark administrator, an authorised benchmark submitter or a designated benchmark submitter, an order restraining a person —
  - (i) from carrying on a business of dealing in capital markets products;
  - (ii) from acting as a representative of a person carrying on a business of dealing in capital markets products;
  - (iii) from holding the person out as a person carrying on a business of dealing in capital markets products;
  - (iv) from carrying on a business of administering a designated benchmark;
  - (v) from providing information in relation to a designated benchmark;
  - (vi) from acting as a representative of an authorised benchmark administrator, an authorised benchmark submitter or a designated benchmark submitter;

- (vii) from holding the person out as a person —
  - (A) carrying on a business of administering a designated benchmark; or
  - (B) providing information in relation to a designated benchmark; or
- (viii) from otherwise acting in breach;
- (b) an order restraining a person from acquiring, disposing of or otherwise dealing with any capital markets products that are specified in the order;
- (c) an order appointing a receiver of the property of the holder of a capital markets services licence to deal in capital markets products or of property that is held by such a holder for or on behalf of another person whether on trust or otherwise;
- (d) an order declaring a contract relating to any dealing in capital markets products to be void or voidable;
- (e) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
- (f) an order restraining the exercise of any voting or other rights attached to any capital markets products that are specified in the order; and
- (g) any ancillary order deemed to be desirable in consequence of the making of any of the above orders.

[4/2017]

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

(3) A person appointed by order of the court under subsection (1) as a receiver of the property of the holder of a capital markets services licence to deal in capital markets products —

- (a) may require the holder to deliver to the receiver any property of which the person has been appointed receiver

or to give to the receiver all information concerning that property that may reasonably be required;

- (b) may acquire and take possession of any property of which the person has been appointed receiver;
- (c) may deal with any property that the person has acquired or of which the person has taken possession in any manner in which the holder might lawfully have dealt with the property; and
- (d) has such other powers in respect of the property as the court may specify in the order.

[4/2017]

(4) For the purposes of subsections (1), (1A) and (3), “property”, in relation to the holder of a capital markets services licence to deal in capital markets products, includes —

- (a) moneys;
- (b) capital markets products;
- (c) documents of title to capital markets products; and
- (d) other property,

entrusted to or received on behalf of any other person by the holder or another person in the course of or in connection with a business of dealing in capital markets products carried on by the holder.

[4/2017]

(5) Any person who, without reasonable excuse, contravenes —

- (a) an order made under subsection (1); or
- (b) a requirement of a receiver appointed by order of the court under subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Subject to subsection (6A), subsection (5) does not affect the powers of the court in relation to the punishment for contempt of court.

[4/2017]

(6A) Where a person is convicted of an offence under subsection (5) in respect of any contravention of an order made under subsection (1), such contravention is not punishable as a contempt of court.

[4/2017]

(6B) A person must not be convicted of an offence under subsection (5) in respect of any contravention of an order made under subsection (1) that has been punished as a contempt of court.

[4/2017]

(7) The court may, on the application of an affected person or of its own motion, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

## **Injunctions**

**326.**—(1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the firstmentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that the person is required by this Act to do, the court may, on the application of —

(a) the Authority; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

make an order requiring the firstmentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before



considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

(4) Where the court has power under this section to grant an injunction or interim injunction or make an order or interim order restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the court may, either in addition to or in substitution for the injunction, order, interim injunction or interim order, order that person to pay damages to any other person.

(5) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on application by any party referred to in subsection (1) or (2) or by any person affected by the injunction, order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

(6) An injunction, order, interim injunction or interim order granted or made under this section may be expressed to operate for a period specified in the injunction, order, interim injunction or interim order or until the injunction, order, interim injunction or interim order is rescinded.

(7) Any person who contravenes an injunction, order, interim injunction or interim order by the court under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

- (a) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person engages in conduct of that kind.

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

(a) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person refuses or fails to do that act or thing.

(10) Where the Authority or any person referred to in subsection (1)(b) or (2)(b) makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court is not to require the Authority or that person (as the case may be) or any other person, as a condition of granting the injunction, interim injunction, order or interim order, to give any undertaking as to damages.

[34/2012]

(11) Subsection (7) does not affect the powers of the court in relation to the punishment for contempt of court.

### **Criminal jurisdiction of District Court**

**327.** Despite any provision to the contrary in the Criminal Procedure Code 2010, a District Court has jurisdiction to try any

offence under this Act and has power to impose the full penalty or punishment in respect of any offence under this Act.

### **Falsification of records by officer, employee or agent of relevant person**

**328.**—(1) Any officer, auditor, employee or agent of any relevant person who —

- (a) wilfully makes, or causes to be made, a false entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person;
- (b) wilfully omits to make, or causes to be omitted, an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person; or
- (c) wilfully alters, extracts, conceals or destroys, or causes to be altered, extracted, concealed or destroyed, an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that relevant person,

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 2 years or to both.

(2) In subsection (1) —

“officer” includes a person purporting to act in the capacity of an officer;

“relevant person” means any —

- (a) approved exchange;
- (b) recognised market operator;
- (c) licensed trade repository;
- (d) licensed foreign trade repository;
- (e) approved clearing house;
- (f) recognised clearing house;

- (g) approved holding company;
- (h) holder of a capital markets services licence to carry on business in any regulated activity;
- (i) exempt person;
- (j) representative;
- (k) approved trustee mentioned in section 289;
- (l) authorised benchmark administrator;
- (m) exempt benchmark administrator;
- (n) authorised benchmark submitter;
- (o) exempt benchmark submitter; or
- (p) designated benchmark submitter.

[2/2009; 34/2012; 4/2017]

### **Duty not to provide false information to Authority**

**329.**—(1) Any person who provides the Authority with any information under this Act must use due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the provision of information.

(3) Any person who —

- (a) signs any document lodged with the Authority; or
- (b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to the person by the Authority,

must use due care to ensure that the document is not false or misleading in any material particular.

[2/2009]

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

**Duty not to provide false statements to approved exchange, licensed trade repository, approved clearing house, recognised clearing house, authorised benchmark administrator, exempt benchmark administrator and Securities Industry Council**

**330.**—(1) Any person who, with intent to deceive, makes or provides, or knowingly and wilfully authorises or permits the making or provision of, any false or misleading statement or report to any approved exchange, licensed trade repository, approved clearing house, recognised clearing house, authorised benchmark administrator or exempt benchmark administrator, or to any officer of such persons —

- (a) while carrying on the activity of dealing in capital markets products;
- (b) relating to a financial instrument;
- (c) relating to the enforcement of the business rules of an approved exchange, a licensed trade repository or an approved clearing house or the listing rules of an approved exchange;
- (d) relating to the affairs of an entity or a business trust;
- (e) relating to a collective investment scheme;
- (f) relating to the affairs of the trustee-manager of a registered business trust;
- (g) relating to a registered business trust which is managed and operated by the trustee-manager of the registered business trust; or
- (h) while carrying on the activity of providing information in relation to a designated benchmark,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[4/2017]

(2) Any person who, with intent to deceive, makes or provides or knowingly and wilfully authorises or permits the making or provision of, any false or misleading statement or report to the Securities Industry Council or any of its officers, relating to any matter or thing required by the Securities Industry Council in the exercise of its functions under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) In subsection (1)(d), the reference to affairs of an entity or a business trust —

(a) in the case of an entity which is a corporation, includes a reference to the matters referred to in section 2(2); and

(b) in the case of —

(i) an entity which is not a corporation; or

(ii) a business trust,

refers to such matters as the Authority may prescribe.

[4/2017]

### **Corporate offenders and unincorporated associations**

**331.**—(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3A) Where an offence under this Act committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“body corporate” and “partnership” exclude a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2005;

“officer” —

(a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership) means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner”, in relation to a partnership, includes a person purporting to act as a partner.

(6) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers

appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

### **Offences by officers**

**332.**—(1) Any person, being an officer of an approved holding company, an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, a holder of a capital markets services licence to carry on business in any regulated activity, an authorised benchmark administrator or an authorised benchmark submitter, who fails to take all reasonable steps to secure —

- (a) compliance with any provision of this Act; or
- (b) 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 \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

*[34/2012; 4/2017]*

(2) In any proceedings against an officer under subsection (1), it is a defence for the defendant to prove that he or she 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 (as the case may be) and that that person was competent, and in a position, to discharge that duty.

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

### **Penalties for corporations**

**333.**—(1) Subject to subsections (2) and (3), where a corporation is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 2 times the maximum amount that, but for this subsection, the court could impose as a fine for that offence.



(2) Subsection (1) does not apply to —

- (a) offences under sections 7(4), (5) and (12), 9(13), 17(2), 22, 23(4), 27(13) and (14), 28(14), 29(4) and (7), 30(4), 35(2), 41(4) and (7), 42, 43(11), 45(3), 46(9), 46AA(9), 46AAB(7), 46AAC(10), 46AAI(8), 46C(2), 46E(14), 46P, 46Q(4), 46U(13) and (14), 46V(14), 46Y(8), 46Z(10), 46ZI, 46ZIB(7), 46ZIC(10), 46ZJ(2), 46ZK(4), 46ZN(8), 49(4), (5) and (12), 51(13), 59, 65, 66(4), 70(13) and (14), 71(14), 72(4), 81A, 81P(10), 81R(3), 81S(9), 81SAA(7), 81SAB(10), 81SD(8), 81U(2) and (9), 81W(8), 81ZA(3), 81ZB(2), 81ZC(2), 81ZD(3), 81ZE(11) and (12), 81ZF(13), 81ZG(4), 81ZGA(2), 81ZGC(7), 81ZGD(10), 81ZJ(10), 81ZL(2), 81ZN(8), 103, 105, 107(3) and (4), 123D(3) and (4), 123F(11), 123K(7), 123O(8) and (9), 123W, 123X(9), 123Y(7), 123Z(7), 123ZA(5), 123ZC(2), 123ZV(8), 123ZW(5), 289(7), 290(4) and 295(6); or
- (b) offences under any subsidiary legislation made under this Act where it is expressly provided in the subsidiary legislation that subsection (1) does not apply to those offences.

[2/2009; 4/2017]

(3) Where an individual is convicted of an offence under this Act by virtue of section 331, he or she shall be liable to the fine or imprisonment or both as prescribed for that offence and subsection (1) does not apply.

### **Power of Authority to reprimand for misconduct**

**334.**—(1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, reprimand the relevant person.

(2) In this section —

“misconduct” means —

(a) the contravention of —

(i) any provision of this Act;

- (ii) any condition or restriction imposed under this Act;
  - (iii) any direction made by the Authority under this Act;
  - (iii) any code, guideline, policy statement or practice note issued under section 321; or
  - (iv) any business rules of an approved exchange, a licensed trade repository or an approved clearing house, or the listing rules of an approved exchange;
- (b) the failure by an officer of a relevant person to discharge any duty or function of his or her office; or
- (c) the commission of an offence under section 331 or 332(1);

“officer” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or a member of the committee of the association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“relevant person” means —

- (a) an approved exchange;
- (b) a recognised market operator;
- (c) a licensed trade repository;

- (d) a licensed foreign trade repository;
  - (e) an approved clearing house;
  - (f) a recognised clearing house;
  - (g) an approved holding company;
  - (h) a holder of a capital markets services licence to carry on business in any regulated activity;
  - (i) an exempt person;
  - (j) an approved trustee mentioned in section 289;
  - (k) an authorised benchmark administrator;
  - (l) an exempt benchmark administrator;
  - (m) an authorised benchmark submitter;
  - (n) an exempt benchmark submitter;
  - (o) a designated benchmark submitter; or
  - (p) any employee, officer, partner or representative of any person mentioned in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) and (o).
- [2/2009; 34/2012; 4/2017]*

### **General penalty**

**335.** Any person who contravenes any provision of this Act shall be guilty of an offence and, where no penalty is expressly provided, shall be liable on conviction to a fine not exceeding \$50,000.

### **Proceedings with consent of Public Prosecutor and power to compound offences**

**336.**—(1) Proceedings for an offence against any provisions of Part 12 may be taken only with the consent of the Public Prosecutor.

*[15/2010]*

(2) The Authority may compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of

money not exceeding one half of the amount of the maximum fine prescribed for that offence.

[34/2012]

(3) The Authority may compound any offence under this Act (including an offence under a provision that has been repealed) which —

(a) was compoundable under this section at the time the offence was committed; but

(b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.

[34/2012]

(4) All sums collected by the Authority under subsection (2) or (3) must be paid into the Consolidated Fund.

[34/2012]

## Exemption

**337.**—(1) The Authority may, by regulations, exempt any person, capital markets product, matter or transaction, or any class thereof, from all or any of the provisions of this Act, subject to such conditions or restrictions as may be prescribed.

(2) Subject to any express provision to the contrary in this Act, an exemption granted to a person or in respect of any capital markets product, matter or transaction (other than an exemption granted to a class of persons, capital markets products, matters or transactions) under any provision of this Act other than subsection (1), or a revocation thereof, may be notified in writing to the person concerned, and need not be published in the *Gazette*.

(3) The Authority may, on the application of any person, by written notice exempt the person from all or any of the requirements specified in any direction made by the Authority under this Act.

(4) An exemption granted under subsection (3) —

- (a) may be granted subject to such conditions or restrictions as the Authority may specify by written notice; and
- (b) for the avoidance of doubt, need not be published in the *Gazette* and may be revoked at any time by the Authority.

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[2/2009]

(5) Any person who contravenes any condition or restriction imposed under subsection (1) or (4)(a) (including any condition or restriction added or varied under subsection (4A)) shall be guilty of an offence.

[2/2009]

### **Power to make regulations giving effect to treaty, etc.**

**338.**—(1) Without limiting section 341, the Authority may make regulations prescribing the matters necessary or expedient to give effect in Singapore to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to the securities and derivatives industry or to financial benchmarks, to which Singapore or the Authority is a party.

[34/2012; 4/2017]

(2) Without limiting subsection (1), such regulations may provide for —

- (a) exemptions from the requirements relating to licensing, approval or registration of any person, the recognition of recognised market operators or the lodgment or registration of any document under this Act;
- (b) exemptions from any requirement in Part 13;
- (c) the application of this Act with such modifications as may be necessary;
- (d) the revocation or withdrawal of any exemption granted; and

- (e) the variation of any condition or restriction imposed in connection with the granting of any exemption under this Act.

### **Extra-territoriality of Act**

**339.**—(1) Where a person does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute an offence against any provision of this Act, that person shall be guilty of that offence as if the act were carried out by that person wholly in Singapore, and may be dealt with as if the offence were committed wholly in Singapore.

(2) Where —

- (a) a person does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore; and
- (b) that act would, if carried out in Singapore, constitute an offence under any provision of Part 2, 2A, 3, 4, 6AA, 8, 12, 13 or 15,

that person shall be guilty of that offence as if the act were carried out by that person in Singapore, and may be dealt with as if the offence were committed in Singapore.

[34/2012; 4/2017]

(2A) For the purposes of an action under section 232 or 234, where a person —

- (a) does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute a contravention of any provision of Part 12; or
- (b) does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore and that act, if carried out in Singapore, would constitute a contravention of any provision of Part 12,

the act is treated as being carried out by that person in Singapore.

(3) The Authority may, by regulations, specify the circumstances under which subsection (2) or (2A)(b) does not apply.

### **Amendment of Schedules**

**340.**—(1) The Minister may by order in the *Gazette*, amend, add to or vary the First, Second, Third or Fourth Schedule.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions to the Act as may be necessary or expedient.

(3) Any order made under subsection (1) must be presented to Parliament as soon as possible after publication in the *Gazette*.

(4) The Authority may, by regulations, provide that the definitions in the Second Schedule do not apply to such person, capital markets product or class of persons or capital markets products as may be prescribed.

### **Regulations**

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

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

- (a) the criteria for authorisation or recognition of collective investment schemes and the constitution, operation, management and offer of such schemes including but not limited to the powers and duties of the managers, trustees or representatives and the rights and obligations of the participants of the schemes;
- (b) the financial requirements and other criteria that a public company must fulfill for it to be considered for approval as a trustee;
- (c) applications for capital markets services licences to carry on business in any regulated activity and matters incidental thereto;
- (d) the activities of, and standards to be maintained by persons holding a capital markets services licence to carry on business in any regulated activity and their representatives,

including the manner, method and place of soliciting business by the holder of the licence and their representatives, the conduct of such solicitation and the risk management of the business;

- (e) [*Deleted by Act 16 of 2003*]
- (f) the conditions for the conduct of business on any approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house or recognised clearing house;
- (g) the form, content distribution and publication of written, printed or visual material and advertisements that may be distributed or used by a person in respect of any regulated activity, including advertisements offering the services of persons holding a capital markets services licence or offering capital markets products for sale;
- (h) 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 persons holding a capital markets services licence to carry on business in any regulated activity;
- (i) the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;
- (j) the manner in which persons holding a capital markets services licence to carry on a business in any regulated activity conduct their dealings with their customers, conflicts of interest involving the holder of the licence and its customers, and the duties of the holder of a licence to its customers when making recommendations in respect of capital markets products;
- (k) the purchase or sale of capital markets products for their own accounts, directly or indirectly by holders of capital markets services licences to carry on business in any regulated activity and their representatives;



- (l) the disclosure by a holder of a capital markets services licence of any material interest that such person might have in a proposed transaction relating to trading in capital markets products;
- (la) the maintenance by the holder of a capital markets services licence, and a representative of such a holder, of registers of their interests in specified products and their duties relating to the registers, and matters relating thereto;
- (m) the specification of manipulative and deceptive devices and contrivances in connection with the purchase or sale of capital markets products;
- (n) the regulation or prohibition of trading on the floor of an approved exchange or a recognised market operator by members of an approved exchange or a recognised market operator (as the case may be) or their representatives directly or indirectly for their own accounts and the prevention of such excessive trading on an approved exchange or a recognised market operator but off the floor of an approved exchange or a recognised market operator by members of an approved exchange or a recognised market operator (as the case may be) or their representatives directly or indirectly for their own accounts as the Authority may consider is detrimental to the maintenance of a fair and orderly organised market; and the exemption of such transactions as the Authority may decide to be necessary in the interests of the public or a section of the public or for the protection of investors;
- (o) the borrowing in the ordinary course of business by persons holding a capital markets services licence as the Authority may consider necessary or appropriate in the interests of the public or a section of the public or for the protection of investors;
- (p) the prohibition or regulation of dealing in capital markets products in circumstances where the person who deals in the capital markets products does not hold or have an

interest in the capital markets products which are being or are proposed to be dealt with;

- (q) the prohibition or restriction of securities-based derivatives contracts that are admitted to the official list of an approved exchange;
- (r) the forms for the purposes of this Act;
- (s) the fees to be paid in respect of any matter or thing required for the purposes of this Act, including licences required under this Act and the refund and remission, whether in whole or in part, of such fees;
- (t) the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to capital markets products as may be prescribed and for the collection and use of such information for any purpose, whether or not connected with the prescribed capital markets products; and
- (u) all matters and 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.

[2/2009; 34/2012; 4/2017]

(3) Except as otherwise expressly provided in this Act, the regulations made under this Act —

- (a) may be of general or specific application;
- (aa) may contain provisions of a saving or transitional nature;
- (b) may provide that a contravention of any specified provision thereof shall be an offence; and
- (c) may provide for penalties not exceeding a fine of \$50,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part of a day during which the offence continues after conviction.

[34/2012]

(3A) For the purposes of paragraphs (b) and (i) of the definition of “derivatives contract” in section 2(1), the Authority may prescribe different contracts, arrangements, transactions and classes of contracts, arrangements or transactions for different purposes.

[34/2012; 4/2017]

(3B) For the purposes of the definition of “financial instrument” in section 2(1), the Authority may prescribe different things for different purposes.

[34/2012]

(3C) For the purposes of the definition of “underlying thing” in section 2(1), the Authority may prescribe different arrangements, events, indices, intangible properties, tangible properties, transactions and classes of arrangements, events, indices, intangible properties, tangible properties or transactions for different purposes.

[34/2012; 4/2017]

(4) Where a person is charged with an offence for contravening a regulation made under subsection (2)(la), it is a defence for the person to prove —

(a) that the person’s contravention was due to the person not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence; and

(b) that —

(i) the person was not so aware on the date of the summons issued for the charge; or

(ii) the person became so aware before the date of the summons and complied with the regulation within 14 days after becoming so aware.

[2/2009]

(5) For the purposes of subsection (4), a person is, in the absence of proof to the contrary, conclusively presumed to have been aware of a fact or occurrence at a particular time which an employee or agent of the person, being an employee or agent having duties or acting in relation to his or her employer’s or principal’s interest or interests in the specified products concerned, was aware of at that time.

[2/2009; 4/2017]

## FIRST SCHEDULE

Sections 2(1) and 340(1)

## PART 1

## MARKET

**Definition of organised market**

1.—(1) In this Act, “organised market” means —

- (a) a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to exchange, sell or purchase derivatives contracts, securities or units in collective investment schemes, are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to exchange, sell or purchase derivatives contracts, securities or units in collective investment schemes (whether through that place or facility or otherwise); or
- (b) such other facility or class of facilities as the Authority may, by order, prescribe.

(2) Despite sub-paragraph (1), “organised market” does not include a place or facility used by only one person —

- (a) to regularly make offers or invitations to sell, purchase or exchange derivatives contracts, securities or units in collective investment schemes; or
- (b) to regularly accept offers to sell, purchase or exchange derivatives contracts, securities or units in collective investment schemes.

2. [*Deleted by Act 4 of 2017*]

3. [*Deleted by Act 4 of 2017*]

FIRST SCHEDULE — *continued*

## PART 2

## CLEARING FACILITY

**Definition of clearing facility**

4.—(1) In this Act —

“clearing facility” means —

- (a) a facility for the clearing or settlement of transactions in derivatives contracts, securities or units in collective investment schemes; or
- (b) such other facility or class of facilities for the clearing or settlement of transactions as the Authority may, by order, prescribe;

“clearing or settlement”, in relation to a clearing facility, means any arrangement, process, mechanism or service provided by a person in respect of transactions, by which —

- (a) information relating to the terms of those transactions are verified by such person with a view to confirming the transactions;
- (b) parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;
- (c) the obligations of parties under those transactions are calculated, whether or not such calculations include multilateral netting arrangements; or
- (d) parties to those transactions meet their obligations under such transactions, including the obligation to deliver, the transfer of funds or the transfer of title to securities between the parties.

(2) For the purposes of this Act, “clearing or settlement” does not include —

- (a) the back office operations of a party to the transactions referred to in sub-paragraph (1);
- (b) the services provided by a person who has, under an arrangement with another person (called in this sub-paragraph the customer), possession or control of securities of the customer, where those services are solely incidental to the settlement of transactions relating to the securities; or
- (c) any other arrangement, process, mechanism or service which the Authority may prescribe.

[2/2009; 34/2012; 4/2017]

## SECOND SCHEDULE

Sections 2(1) and 340(1) and (4)

## REGULATED ACTIVITIES

## PART 1

## TYPES OF REGULATED ACTIVITIES

The following are regulated activities for the purposes of this Act:

- (a) dealing in capital markets products;
- (b) advising on corporate finance;
- (c) fund management;
- (d) real estate investment trust management;
- (e) product financing;
- (f) providing credit rating services;
- (g) providing custodial services.

## PART 2

## INTERPRETATION

In this Schedule —

“agreement” includes arrangement;

“advising on corporate finance” means giving advice —

- (a) to any person (whether as principal or agent, or as trustee of a trust) concerning compliance with or in respect of laws or regulatory requirements (including the listing rules of an approved exchange) relating to the raising of funds by any entity, trustee of a trust on behalf of the trust or responsible person of a collective investment scheme on behalf of the collective investment scheme;
- (b) to a person making an offer —
  - (i) to subscribe for or purchase specified products; or
  - (ii) to sell or otherwise dispose of specified products, concerning that offer;
- (c) concerning the arrangement, reconstruction or take-over of a corporation or any of its assets or liabilities; or

SECOND SCHEDULE — *continued*

- (d) concerning the take-over of a business trust or any of its assets or liabilities held by the trustee-manager on behalf of the business trust;

“credit rating” means an opinion expressed using an established and defined ranking system of rating categories, primarily regarding the creditworthiness of a rating target;

“dealing in capital markets products” means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, entering into, effecting, arranging, subscribing for, or underwriting any capital markets products;

“financial institution” means —

- (a) any bank licensed under the Banking Act 1970;
- (b) any merchant bank licensed under the Banking Act 1970; or
- (c) any finance company licensed under the Finance Companies Act 1967;

“fund management” means managing the property of, or operating, a collective investment scheme, or undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise) —

- (a) the management of a portfolio of capital markets products; or
- (b) the entry into spot foreign exchange contracts for the purpose of managing the customer’s funds,

but does not include real estate investment trust management;

“leveraged foreign exchange trading” means entering into a spot foreign exchange contract where one counterparty provides to the other counterparty or the counterparty’s agent money, securities, property or other collateral which represents only a part of the value of the spot foreign exchange contract;

“offer” or “offering” includes invitation to treat;

“product financing” means providing any credit facility, advance or loan to facilitate (directly or indirectly) —

- (a) the subscription of specified products listed or to be listed on an organised market;
- (b) the purchase of specified products listed or to be listed on an organised market;

SECOND SCHEDULE — *continued*

- (c) the purchase of such specified products as the Authority may prescribe; or
- (d) where applicable, the continued holding of specified products mentioned in paragraph (a), (b) or (c),

whether or not the specified products are pledged as security for the credit facility, advance or loan, but does not include the provision of —

- (e) any credit facility, advance or loan that forms part of an arrangement to underwrite or sub-underwrite specified products;
- (f) any credit facility, advance or loan to —
  - (i) a holder of a capital markets services licence to deal in capital markets products in respect of specified products;
  - (ii) a holder of capital markets services licence for product financing; or
  - (iii) a financial institution,

for the purposes of facilitating the acquisition or holding of specified products;

- (g) any credit facility, advance or loan by a company to its directors or employees to facilitate the acquisition or holding of its own specified products;
- (h) any credit facility, advance or loan by a member of a group of companies to another member of the group to facilitate the acquisition or holding of specified products by that other member; or
- (i) any credit facility, advance or loan by an individual to a company in which he or she holds 10% or more of its issued share capital to facilitate the acquisition or holding of specified products;

“providing credit rating services” means preparing, whether wholly or partly in Singapore, credit ratings in relation to activities in the securities and futures industry for —

- (a) dissemination, whether in Singapore or elsewhere, or with a reasonable expectation that they will be so disseminated; or



SECOND SCHEDULE — *continued*

- (b) distribution by subscription, whether in Singapore or elsewhere, or with a reasonable expectation that they will be so distributed,

but does not include —

- (c) preparing a private credit rating pursuant to an individual order which is intended to be provided exclusively to the person who placed the order and not intended for public disclosure or distribution by subscription; or
- (d) preparing credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships;

“providing custodial services” means, in relation to specified products, providing or agreeing to provide any service where the person providing the service has, under an arrangement with another person (the customer), possession or control of the specified products of the customer and carries out one or more of the following functions for the customer:

- (a) settlement of transactions relating to the specified products;
- (b) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the specified products;
- (c) paying tax or other costs associated with the specified products;
- (d) exercising rights, including without limitation voting rights, attached to or derived from the specified products;
- (e) any other function necessary or incidental to the safeguarding or administration of the specified products,

but does not include —

- (f) the activities of a corporation that is a Depository as defined in section 81SF;
- (g) the provision of services to a related corporation or connected person, so long as none of the specified products in respect of which such services are provided is —
- (i) held on trust for another person by the related corporation or connected person;
- (ii) held as a result of any custodial services provided by the related corporation or connected person to another person; or
- (iii) beneficially owned by any person other than the related corporation or connected person;

SECOND SCHEDULE — *continued*

(h) the provision of services by a nominee corporation that are solely incidental to the business of the nominee corporation; and

(i) any other conduct the Authority may, by order, prescribe;

“rating category” means a rating symbol, such as a letter or numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the types of rating targets;

“rating target” means the subject of a credit rating which may be —

(a) a person other than an individual;

(b) the government of a sovereign country, including the Government of Singapore; or

(c) capital markets products;

“real estate investment trust management” means managing the property of, or operating, a real estate investment trust;

“spot foreign exchange contract” means a spot contract of which the underlying thing is a currency.

*[2/2009; 35/2014; 4/2017; 1/2020; S 376/2008;  
S 20/2012]*

## THIRD SCHEDULE

Sections 82(2) and 340(1)

## SPECIFIED PERSONS

1. Any company licensed under the Trust Companies Act 2005 whose carrying on of the business in that regulated activity is solely incidental to its carrying on of the business for which it is registered under that Act.

2. Any public statutory corporation established under any Act in Singapore.

THIRD SCHEDULE — *continued*

## 3. Any —

(a) advocate and solicitor;

(aa) Singapore law practice, Joint Law Venture, Formal Law Alliance or Qualifying Foreign Law Practice, as defined in section 2(1) of the Legal Profession Act 1966; or

(b) public accountant who is registered under the Accountants Act 2004 or accounting corporation which is approved under that Act,

whose carrying on of the business in that regulated activity is solely incidental to the practice of law or accounting, as the case may be.

4. The Official Assignee in exercising his or her powers under the Insolvency, Restructuring and Dissolution Act 2018.

5. The Public Trustee in exercising his or her powers under the Public Trustee Act 1915.

6. A person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager or judicial manager.

7. Any approved trustee for a collective investment scheme as defined in section 289 whose carrying on of business in a regulated activity is solely incidental to its carrying on of activities as such approved trustee.

8. An approved trustee (as defined in section 289) who is a custodian of a VCC or a sub-fund and whose carrying on of business in a regulated activity is solely incidental to its carrying on of activities as such custodian.

## 9. A foreign company which —

(a) carries on all its regulated activities under one or more arrangements that are —

(i) between the foreign company (on the one hand) and its related corporation which is licensed under this Act or exempted under section 99(1)(a), (b), (c) or (d) (on the other hand); and

(ii) approved by the Authority; and

(b) is not exempt under regulation 5(1) of the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 (G.N. No. S 760/2021) in respect of the carrying on of any of those regulated activities.

*[40/2018; S 446/2016; S 53/2020; S 761/2021]*

## FOURTH SCHEDULE

Sections 320(1A) and 340(1)

## SPECIFIED PROVISIONS

1. Section 7(7)
2. Section 27(11)
3. Section 28(12)
4. Section 46AAG(2)
5. Section 46U(11)
6. Section 46V(12)
7. Section 46ZL(2)
8. Section 49(7)
9. Section 57(3)
10. Section 70(11)
11. Section 71(12)
12. Section 75(3)
13. Section 81SB(2)
14. Section 81U(4)
15. Section 81ZE(10)
16. Section 81ZF(12)
17. Section 81ZI
18. Section 99(1)(h)
19. Section 99B(2)
20. Section 99I(1)
21. Section 123K(1)(b)
22. Section 123N(1)
23. Section 123ZH(4)
24. Section 129A(2)
25. Section 129H(2)
26. Section 129O(2)
27. Section 247(1)

FOURTH SCHEDULE — *continued*

28. Section 248(2) and (5)
29. Section 249(3)
30. Section 251(14)
31. Section 259(3)
32. Section 262(2)
33. Section 300(9)
34. Section 302 (when applying section 247(1) or 249(3))
35. Section 306(1)
36. Section 309(3)(a)
37. Section 309B(5)
38. Section 337(3).

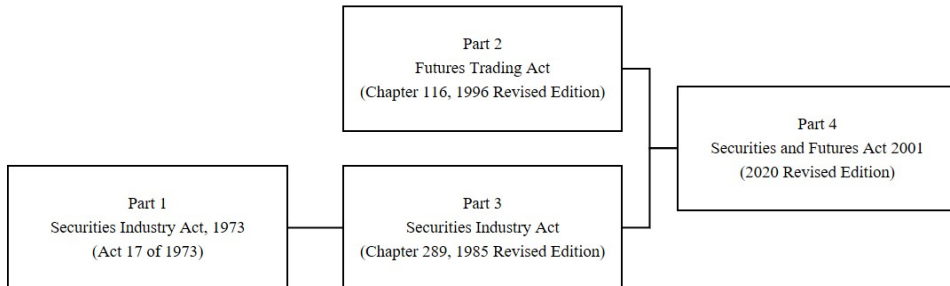
[4/2017]

# LEGISLATIVE HISTORY

## SECURITIES AND FUTURES ACT 2001

This Legislative History is a service provided by the Law Revision Commission on a best-efforts basis. It is not part of the Act.

### PICTORIAL OVERVIEW OF PREDECESSOR ACTS



### LEGISLATIVE HISTORY DETAILS

#### PART 1 SECURITIES INDUSTRY ACT, 1973 (ACT 17 OF 1973)

##### 1. Act 17 of 1973 — Securities Industry Act, 1973

Bill	:	9/1973
First Reading	:	16 February 1973
Second Reading	:	7 March 1973
Notice of Amendments	:	7 March 1973
Third Reading	:	7 March 1973
Commencement	:	23 May 1973 (except Parts IV and VIII) 1 September 1973 (Parts IV and VIII)

##### 2. Act 51 of 1973 — Securities Industry (Amendment) Act, 1973

Bill	:	47/1973
First Reading	:	25 July 1973
Second and Third Readings	:	28 August 1973
Commencement	:	5 October 1973

**3. Act 6 of 1974 — Securities Industry (Amendment) Act, 1974**

Bill	:	12/1974
First Reading	:	14 March 1974
Second and Third Readings	:	27 March 1974
Commencement	:	10 May 1974

PART 2  
FUTURES TRADING ACT  
(CHAPTER 116, 1996 REVISED EDITION)

**4. Act 14 of 1986 — Futures Trading Act 1986**

Bill	:	2/1986
First Reading	:	26 February 1986
Second and Third Readings	:	31 March 1986
Commencement	:	15 August 1986

**5. 1985 Revised Edition — Futures Trading Act (Chapter 116)**

Operation	:	30 March 1987
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**6. G.N. No. S 22/1989 — Revised Edition of the Laws (Rectification) Order 1989**

Operation	:	30 March 1987
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**7. Act 9 of 1995 — Futures Trading (Amendment) Act 1995**

Bill	:	3/1995
First Reading	:	23 January 1995
Second and Third Readings	:	1 March 1995
Commencement	:	1 April 1995

**8. 1996 Revised Edition — Futures Trading Act (Chapter 116)**

Operation	:	27 December 1996
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**9. Act 25 of 1999 — Drug Trafficking (Confiscation of Benefits) (Amendment) Act 1999**

(Amendments made by section 31 read with item (5) of the Schedule to the above Act)

Bill	:	16/1999
First Reading	:	4 May 1999

Second and Third Readings	:	6 July 1999
Commencement	:	13 September 1999 (section 31 read with item (5) of the Schedule)

**10. Act 27 of 1999 — Exchanges (Demutualisation and Merger) Act 1999**  
(Amendments made by section 19 of the above Act)

Bill	:	20/1999
First Reading	:	6 July 1999
Second and Third Readings	:	4 August 1999
Commencement	:	8 October 1999 (section 19(d)) 1 October 2000 (section 19(a), (b) and (c))

**11. Act 3 of 2000 — Futures Trading (Amendment) Act 2000**

Bill	:	39/1999
First Reading	:	23 November 1999
Second and Third Readings	:	17 January 2000
Commencement	:	6 March 2000

PART 3

SECURITIES INDUSTRY ACT  
(CHAPTER 289, 1985 REVISED EDITION)

**12. Act 15 of 1986 — Securities Industry Act 1986**

Bill	:	3/1986
First Reading	:	26 February 1986
Second and Third Readings	:	31 March 1986
Commencement	:	15 August 1986

**13. Act 3 of 1987 — Statute Law Revision Act 1987**

(Amendments made by section 2 read with the First Schedule to the above Act)

Bill	:	28/1986
First Reading	:	9 December 1986
Second and Third Readings	:	26 January 1987
Commencement	:	20 February 1987 (section 2 read with the First Schedule)



**14. 1985 Revised Edition — Securities Industry Act (Chapter 289)**

Operation : 30 March 1987

**15. G.N. No. S 227/1995 — Revised Edition of the Laws (Rectification) Order 1995**

Operation : 30 March 1987

**16. Act 27 of 1999 — Exchanges (Demutualisation and Merger) Act 1999**  
(Amendments made by section 20 of the above Act)

Bill : 20/1999

First Reading : 6 July 1999

Second and Third Readings : 4 August 1999

Commencement : 8 October 1999 (section 20(a), (b), (c) and (g))  
1 December 1999 (section 20(d), (e), (f), (h) and (i))

**17. Act 2 of 2000 — Securities Industry (Amendment) Act 2000**

Bill : 40/1999

First Reading : 23 November 1999

Second and Third Readings : 17 January 2000

Commencement : 6 March 2000

**18. Act 28 of 2000 — Statutes (Miscellaneous Amendments and Repeal) Act 2000**

(Amendments made by section 11 of the above Act)

Bill : 22/2000

First Reading : 25 August 2000

Second and Third Readings : 9 October 2000

Commencement : 1 November 2000 (section 11)

**19. G.N. No. S 675/2001 — Securities and Futures (Repeal of Provisions) Notification 2001**

Commencement : 28 December 2001

PART 4  
SECURITIES AND FUTURES ACT 2001  
(2020 REVISED EDITION)

**20. Act 42 of 2001 — Securities and Futures Act 2001**

Bill	:	33/2001
First Reading	:	25 September 2001
Second and Third Readings	:	5 October 2001
Commencement	:	1 January 2002 (Parts I, VIII, IX, X and XV (except sections 314 and 342(1) and (3)), First Schedule, Second Schedule and items (4)(o) and (q) and (7)(c) of the Fourth Schedule) 1 July 2002 (Parts XIII and XIV, and items (1)(a), (3)(a), (4)(a)(i), (iii) to (ix), (b), (c), (f), (g), (h), (i), (l), (m), (t) and (u), (7)(b) , (12) and (13) of the Fourth Schedule) 1 October 2002 (Parts II to VII, XI and XII, sections 314 and 342(1) and (3), Third Schedule and items (1)(b), (2), (3)(b), (4)(a)(ii), (d), (e), (j), (k), (n), (p), (r), (s) and (v), (5), (6) and (7)(a) and (d) and (8) to (11) of the Fourth Schedule)

**21. G.N. No. S 674/2001 — Securities and Futures Act (Amendment of Second Schedule) Order 2001**

Commencement	:	1 January 2002
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**22. Act 39 of 2002 — Payment and Settlement Systems (Finality and Netting) Act 2002**

(Amendments made by section 20(3) of the above Act)

Bill	:	41/2002
First Reading	:	31 October 2002
Second and Third Readings	:	25 November 2002
Commencement	:	9 December 2002 (section 20(3))

**23. 2002 Revised Edition — Securities and Futures Act (Chapter 289)**

Operation	:	31 December 2002
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**24. Act 16 of 2003 — Securities and Futures (Amendment) Act 2003**

Bill	:	15/2003
First Reading	:	14 August 2003
Second and Third Readings	:	2 September 2003
Commencement	:	22 December 2003 (except section 56(e), (g) and (h))

**25. Act 24 of 2003 — Monetary Authority of Singapore (Amendment) Act 2003**

(Amendments made by section 13 read with item (8) of the Schedule to the above Act)

Bill	:	21/2003
First Reading	:	16 October 2003
Second and Third Readings	:	10 November 2003
Commencement	:	1 January 2004 (section 13 read with item (8) of the Schedule)

**26. Act 5 of 2004 — Companies (Amendment) Act 2004**

(Amendments made by section 59 read with item (6) of the Schedule to the above Act)

Bill	:	3/2004
First Reading	:	5 January 2004
Second and Third Readings	:	6 February 2004
Commencement	:	1 April 2004 (section 59 read with item (6) of the Schedule)

**27. Act 31 of 2004 — Securities and Futures (Amendment) Act 2004**

Bill	:	29/2004
First Reading	:	20 July 2004
Second and Third Readings	:	1 September 2004
Commencement	:	12 October 2004

**28. Act 5 of 2005 — Limited Liability Partnerships Act 2005**

(Amendments made by section 60 read with item (12) of the Sixth Schedule to the above Act)

Bill	:	64/2004
First Reading	:	19 October 2004

Second and Third Readings	:	25 January 2005
Commencement	:	11 April 2005 (section 60 read with item (12) of the Sixth Schedule)

**29. Act 1 of 2005 — Securities and Futures (Amendment) Act 2005**

Bill	:	46/2004
First Reading	:	19 October 2004
Second and Third Readings	:	25 January 2005
Commencement	:	1 July 2005 (except sections 2(c), (g) and (y), 42 to 82, 83(a) to (d) and (f), 84 to 103, 105 and 109) 15 October 2005 (sections 2(c), (g) and (y), 42 to 82, 83(a) to (d) and (f), 84 to 103, 105 and 109)

**30. Act 42 of 2005 — Statutes (Miscellaneous Amendments) (No. 2) Act 2005**  
(Amendments made by section 20 and section 5 read with item (31) of the First Schedule to the above Act)

Bill	:	30/2005
First Reading	:	17 October 2005
Second and Third Readings	:	21 November 2005
Commencement	:	1 July 2005 (section 20(e)) 1 January 2006 (section 20(a), (b) and (d)) 30 January 2006 (section 20(c)) 1 April 2006 (section 5 read with item (31) of the First Schedule)

**31. Act 11 of 2005 — Trust Companies Act 2005**

(Amendments made by section 84 read with item (7) of the Fifth Schedule to the above Act)

Bill	:	1/2005
First Reading	:	25 January 2005
Second and Third Readings	:	18 February 2005
Commencement	:	1 February 2006 (section 84 read with item (7) of the Fifth Schedule)

**32. 2006 Revised Edition — Securities and Futures Act (Chapter 289)**

Operation	:	1 April 2006
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**33. Act 2 of 2007 — Statutes (Miscellaneous Amendments) Act 2007**  
(Amendments made by section 4 read with item (11) of the Schedule to the above Act)

Bill	:	14/2006
First Reading	:	8 November 2006
Second and Third Readings	:	22 January 2007
Commencement	:	1 March 2007 (section 4 read with item (11) of the Schedule)

**34. Act 35 of 2007 — Commodity Trading (Amendment) Act 2007**  
(Amendments made by section 28 of the above Act)

Bill	:	23/2007
First Reading	:	21 May 2007
Second and Third Readings	:	17 July 2007
Commencement	:	27 August 2007 (section 28(c)) 27 February 2008 (section 28(a) and (b))

**35. G.N. No. S 376/2008 — Securities and Futures Act (Amendment of Second Schedule and Other Provisions to Act for REIT Management) Order 2008**

Commencement	:	1 August 2008
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**36. Act 2 of 2009 — Securities and Futures (Amendment) Act 2009**

Bill	:	23/2008
First Reading	:	15 September 2008
Second and Third Readings	:	19 January 2009
Commencement	:	20 April 2009 (sections 2(f) and (l) to (o), 52, 55 and 65(c)) 29 July 2009 (sections 2(b), (c), (q) and (r), 5, 7, 9 to 12, 44, 45, 50, 51, 53, 54, 56(a), 57, 60, 65(a) and (b), 66, 68(a), 69 to 72, 73(a), (b), (d), (e) and (f), 74, 77, 79(a), 81, 82, 83, 84(a), (b), (d), (e) and (f), 85, 86, 88, 92 to 95, 98(c), 99 to 102, 103(b), (c) and (d), 104, 115 and 117) 29 March 2010 (sections 2(d) and (e), 3, 4, 6, 8, 13, 14, 49, 67, 78(b), (c) and

(*d*), 96, 97 and 118(*g*)  
 26 November 2010 (sections 2(*a*), (*g*),  
 (*h*), (*i*), (*k*) and (*s*), 15 to 41, 46, 47, 48,  
 58, 98(*a*) and (*b*), 109, 110, 112,  
 113(*a*), 118(*f*) and 120)  
 1 October 2012 (sections 2(*j*), 43,  
 56(*b*) and (*c*), 59, 61 to 64, 68(*b*), 75,  
 78(*a*), 79(*b*), 80, 87, 90, 91, 98(*d*), 105  
 to 108, 111, 114 and 116)  
 19 November 2012 (sections 2(*p*), (*t*),  
 (*u*), (*v*), and (*w*), 42, 76, 113(*b*) and (*c*),  
 118(*a*) to (*e*) and (*h*) and 119)

**37. Act 15 of 2010 — Criminal Procedure Code 2010**

(Amendments made by section 430 read with item 92 of the Sixth Schedule to the above Act)

Bill	:	11/2010
First Reading	:	26 April 2010
Second Reading	:	18 May 2010
Third Reading	:	19 May 2010
Commencement	:	2 January 2011 (section 430 read with item 92 of the Sixth Schedule)

**38. G.N. No. S 20/2012 — Securities and Futures Act (Amendment of Second Schedule and Other Provisions for Provision of Credit Rating Services) Order 2012**

Commencement	:	17 January 2012
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**39. Act 34 of 2012 — Securities and Futures (Amendment) Act 2012**

Bill	:	31/2012
First Reading	:	15 October 2012
Second and Third Readings	:	15 November 2012
Commencement	:	18 March 2013 (sections 3( <i>a</i> ), ( <i>e</i> ) and ( <i>r</i> ), 4, 5, 16, 18 to 23, 26, 28, 30, 34( <i>b</i> ) and ( <i>c</i> ), 35, 41 to 51, 56, 67 to 70, 72, 74, 79( <i>b</i> ) and ( <i>c</i> ), 80, 82, 84, 89, 94( <i>b</i> ) and 95) 1 August 2013 (sections 2, 3( <i>b</i> ), ( <i>c</i> ), ( <i>d</i> ), ( <i>f</i> ) to ( <i>q</i> ) and ( <i>s</i> ) to ( <i>w</i> ), 6 to 15, 17, 24, 25, 29, 31, 32, 40, 78, 79( <i>a</i> ), 81, 83, 85 to 88, 90 to 93, 94( <i>a</i> ), 96 and

97)  
 31 October 2013 (section 27)  
 1 May 2014 (sections 33, 34(a) and 36  
 to 39)  
 19 August 2016 (sections 52 to 55, 57  
 to 66, 71, 73, 75, 76 and 77)

**40. Act 10 of 2013 — Financial Institutions (Miscellaneous Amendments) Act 2013**

(Amendments made by section 9 of the above Act)

Bill	:	4/2013
First Reading	:	4 February 2013
Second and Third Readings	:	15 March 2013
Commencement	:	18 April 2013 (section 9(1)) 2 August 2013 (section 9(2)) 1 November 2013 (section 9(3))

**41. Act 11 of 2013 — Insurance (Amendment) Act 2013**

(Amendments made by section 69 read with item 12 of the Schedule to the above Act)

Bill	:	5/2013
First Reading	:	4 February 2013
Second Reading	:	15 March 2013
Notice of Amendments	:	15 March 2013
Third Reading	:	15 March 2013
Commencement	:	18 April 2013 (section 69 read with item 12 of the Schedule)

**42. Act 35 of 2014 — Statutes (Miscellaneous Amendments) (No. 2) Act 2014**

(Amendments made by section 14 of the above Act)

Bill	:	24/2014
First Reading	:	8 September 2014
Second and Third Readings	:	7 October 2014
Commencement	:	1 July 2015 (section 14 except section 14(za), (ze) and (zf)) 3 January 2016 (section 14(za), (ze) and (zf))

- 43. Act 29 of 2014 — Business Names Registration Act 2014**  
(Amendments made by section 47 read with item 17 of the Schedule to the above Act)
- |                           |   |   |
|---------------------------|---|---|
| Bill                      | : | 26/2014   |
| First Reading             | : | 8 September 2014  |
| Second and Third Readings | : | 8 October 2014  |
| Commencement              | : | 3 January 2016 (section 47 read with item 17 of the Schedule) |
- 44. Act 36 of 2014 — Companies (Amendment) Act 2014**  
(Amendments made by section 187 of the above Act)
- |                      |   |                              |
|----------------------|---|------------------------------|
| Bill                 | : | 25/2014                      |
| First Reading        | : | 8 September 2014             |
| Second Reading       | : | 7 October 2014               |
| Notice of Amendments | : | 8 October 2014               |
| Third Reading        | : | 8 October 2014               |
| Commencement         | : | 3 January 2016 (section 187) |
- 45. G.N. No. S 446/2016 — Securities and Futures Act (Amendment of Third Schedule) Order 2016**
- |              |   |                   |
|--------------|---|-------------------|
| Commencement | : | 30 September 2016 |
|--------------|---|-------------------|
- 46. Act 31 of 2017 — Monetary Authority of Singapore (Amendment) Act 2017**  
(Amendments made by section 46 of the above Act)
- |                           |   |  |
|---------------------------|---|--|
| Bill                      | : | 25/2017  |
| First Reading             | : | 8 May 2017   |
| Second and Third Readings | : | 4 July 2017  |
| Commencement              | : | 5 June 2018 (section 46(c) and (d))<br>29 October 2018 (section 46(a) and (b)) |
- 47. Act 4 of 2017 — Securities and Futures (Amendment) Act 2017**
- |                           |   |                 |
|---------------------------|---|-----------------|
| Bill                      | : | 35/2016         |
| First Reading             | : | 7 November 2016 |
| Second and Third Readings | : | 9 January 2017  |



Commencement : 1 October 2018 (sections 55 to 59 and 74)  
8 October 2018 (sections 2 to 54, 60 to 73, 75 to 197, 199 to 202 and 204 to 212)

**48. Act 44 of 2018 — Variable Capital Companies Act 2018**

(Amendments made by section 167(5) of the above Act)

Bill : 40/2018  
First Reading : 10 September 2018  
Second and Third Readings : 1 October 2018  
Commencement : 14 January 2020 (section 167(5))

**49. G.N. No. S 53/2020 — Securities and Futures Act (Amendment of Third Schedule) Order 2020**

Commencement : 21 January 2020

**50. Act 2 of 2019 — Payment Services Act 2019**

(Amendments made by section 119 of the above Act)

Bill : 48/2018  
First Reading : 19 November 2018  
Second and Third Readings : 14 January 2019  
Commencement : 28 January 2020 (section 119)

**51. Act 40 of 2018 — Insolvency, Restructuring and Dissolution Act 2018**

(Amendments made by section 507 of the above Act)

Bill : 32/2018  
First Reading : 10 September 2018  
Second and Third Readings : 1 October 2018  
Commencement : 30 July 2020 (section 507)

**52. Act 40 of 2019 — Supreme Court of Judicature (Amendment) Act 2019**

(Amendments made by section 28(1) read with item 143 of the Schedule to the above Act)

Bill : 32/2019  
First Reading : 7 October 2019  
Second Reading : 5 November 2019  
Notice of Amendments : 5 November 2019

Third Reading	:	5 November 2019
Commencement	:	2 January 2021 (section 28(1) read with item 143 of the Schedule)

**53. Act 1 of 2020 — Banking (Amendment) Act 2020**

(Amendments made by section 62 of the above Act)

Bill	:	35/2019
First Reading	:	4 November 2019
Second and Third Readings	:	6 January 2020
Commencement	:	1 July 2021 (section 62)

**54. G.N. No. S 761/2021 — Securities and Futures Act (Amendment of Third Schedule) Order 2021**

Commencement	:	9 October 2021
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Abbreviations

C.P.	Council Paper
G.N. No. S (N.S.)	Government Notification Number Singapore (New Series)
G.N. No.	Government Notification Number
G.N. No. S	Government Notification Number Singapore
G.N. Sp. No. S	Government Notification Special Number Singapore
L.A.	Legislative Assembly
L.N.	Legal Notification (Federal/Malaysian Subsidiary Legislation)
M. Act	Malayan Act/Malaysia Act
M. Ordinance	Malayan Ordinance
Parl.	Parliament
S.S.G.G. (E) No.	Straits Settlements Government Gazette (Extraordinary) Number
S.S.G.G. No.	Straits Settlements Government Gazette Number

**COMPARATIVE TABLE**  
**SECURITIES AND FUTURES ACT 2001**

This Act has undergone renumbering in the 2020 Revised Edition. This Comparative Table is provided to help readers locate the corresponding provisions in the last Revised Edition.

<b>2020 Ed.</b>	<b>2006 Ed.</b>
—	<b>46ZIC</b> —(11) [ <i>Deleted by Act 4 of 2017</i> ]
—	<b>81SAB</b> —(11) [ <i>Deleted by Act 4 of 2017</i> ]
—	<b>81ZGD</b> —(11) [ <i>Deleted by Act 4 of 2017</i> ]
—	<b>84</b> —(4) [ <i>Deleted by Act 2 of 2009</i> ]
—	(5) [ <i>Deleted by Act 2 of 2009</i> ]
—	(5A) [ <i>Deleted by Act 2 of 2009</i> ]
—	(5B) [ <i>Deleted by Act 2 of 2009</i> ]
—	(6) [ <i>Deleted by Act 2 of 2009</i> ]
—	(7) [ <i>Deleted by Act 2 of 2009</i> ]
—	(8) [ <i>Deleted by Act 2 of 2009</i> ]
—	<b>90</b> —(2A) [ <i>Deleted by Act 2 of 2009</i> ]
—	<b>97F</b> —(11) [ <i>Deleted by Act 4 of 2017</i> ]
—	<b>342</b> [ <i>Repealed by Act 4 of 2017</i> ]