



**THE STATUTES OF THE REPUBLIC OF SINGAPORE**

**SECURITIES AND FUTURES ACT**

**(CHAPTER 289)**

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# Securities and Futures Act

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

[1st January 2002: Parts I, VIII, IX, X and XV (except section 314), First and Second Schedules ;  
1st July 2002: Parts XIII and XIV ;  
1st October 2002: Parts II to VII, XI and XII,  
section 314 and Third Schedule ]

## PART I

## PRELIMINARY

**Short title**

1. This Act may be cited as the Securities and Futures Act.

**Interpretation**

- 2.—(1) In this Act, unless the context otherwise requires —
  - “advising on corporate finance” has the meaning given to it in the Second Schedule;
  - “advocate and solicitor” means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 130A of the Legal Profession Act (Cap. 161);
  - “appointed representative”, in respect of a type of regulated activity, has the meaning given to that expression in section 99D, and “appointed representative” means an

appointed representative in respect of any type of regulated activity;

[2/2009 wef 26/11/2010]

“approved exchange” means a corporation that is approved by the Authority under section 8(1) 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 (Cap. 2) and, in Divisions 1 and 1A of Part XIII, 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 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 may be approved by the Authority in any particular case to be an auditor for such entity;

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

“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, a securities exchange, a futures exchange, a recognised market operator or a designated 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, securities exchange, futures exchange, recognised market operator or designated clearing house and its members; 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, securities exchange, futures exchange, recognised market operator or designated clearing house or are contained in its constituent documents, but does not include the listing rules of a securities exchange or recognised market operator (which is an overseas securities exchange);

“business trust” has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

“capital markets products” means any securities, futures contracts, contracts or arrangements for the purposes of foreign exchange trading, contracts or arrangements 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;

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

“chief executive officer” —

(a) in relation to an approved exchange, a recognised market operator, a designated clearing house, a person operating a clearing facility, an approved holding company or the holder of a capital markets services licence, means any person, by whatever name called, who is —

(i) in the direct employment of, or acting for or by arrangement with, the approved exchange, recognised market operator, designated clearing house, person operating a clearing facility, approved holding company or holder of a capital markets services licence, as the case may be; and

(ii) principally responsible for the management and conduct of the business of the approved exchange, recognised market operator, designated clearing house, person operating a clearing facility, approved holding company or holder of a capital markets services licence, as the case may be, in Singapore; or

(b) in relation to a corporation (other than one referred to in paragraph (a)), means any person, by whatever name called, who is in the direct employment of, or acting for or by arrangement with, the corporation, and who is principally responsible for the management and conduct of the business of the corporation;

“clearing facility” has the meaning given to it in Part II of the First Schedule;

“clearing or settlement” has the meaning given to it in Part II 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 an arrangement referred to in paragraph (a) of that definition —

- (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  
*[2/2009 wef 29/07/2009]*
- (c) all or any units of which are listed for quotation on a securities exchange;

“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 —
    - (A) the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and
    - (B) the property is managed as a whole by or on behalf of a manager;
  - (ii) under which the contributions of the participants and the profits or income from which payments are to be made to them are pooled; and
  - (iii) the purpose or effect, or purported purpose or effect, of which 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) —
    - (A) to participate in or receive profits, income, or other payments or returns

arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or

(B) to receive sums paid out of such profits, income, or other payments or returns; 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 published in the *Gazette*,

but does not include —

- (i) an arrangement operated by a person otherwise than by way of business;
- (ii) 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;
- (iii) an arrangement under which each of the participants is a related corporation of the manager;
- (iv) an arrangement made by or on behalf of an entity solely for the benefit of persons, each of whom is —
  - (A) 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
  - (B) a spouse, widow or widower, or a child, adopted child or step-child below the age of 18 years, of such director or equivalent person, former director or equivalent person, employee or former employee;

- (iva) an arrangement made by or on behalf of 2 or more entities solely for the benefit of persons, each of whom is —
  - (A) 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
  - (B) a spouse, widow or widower, or a child, adopted child or step-child below the age of 18 years, of such director or equivalent person, former director or equivalent person, employee or former employee;
- (v) a franchise;
- (vi) an arrangement under which money received by an advocate and solicitor from his client, whether as a stakeholder or otherwise, acting in his professional capacity in the ordinary course of his practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions;
- (vii) an arrangement made by any co-operative society registered under the Co-operative Societies Act (Cap. 62) in accordance with the objects thereof solely for the benefit of its members;
- (viii) an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act (Cap. 39);
- (ix) an arrangement arising out of a life policy within the meaning of the Insurance Act (Cap. 142);
- (x) a closed-end fund constituted either as an entity or a trust;

(xi) [*Deleted by Act 31/2004*]

(xii) 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 published in the *Gazette*;

“commodity”, in relation to a futures contract, means gold or any produce, item, goods, article or financial instrument, and includes an index, right or interest in such commodity other than a financial instrument; and such other index, right or interest of any nature as the Authority may, by notification in the *Gazette*, prescribe to be a commodity;

“company” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“connected person”, in relation to —

(a) an individual, means —

(i) the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister; 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 first-mentioned 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 shall be construed accordingly;

“corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“customer” means —

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

(i) for the purposes of Parts IV, VI, VII and XV, a person on whose behalf the holder carries on or will carry on any regulated activity; or

(ii) for the purposes of Part V, a person on whose behalf the holder carries on or will carry on any regulated activity, or any other person with whom the holder, as principal, enters or will enter into transactions —

(A) for the sale or purchase of securities;

(B) for the sale or purchase of futures contracts; or

(C) in connection with leveraged foreign exchange trading,

but does not include such person or class of persons as may be prescribed; or

(b) for the purposes of Part III and the definition of “user”, a person on whose behalf a member of an approved exchange or a designated clearing house, 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;

*[2/2009 wef 29/03/2010]*

“dealing in securities” has the meaning given to it in the Second Schedule;

“debenture”, except for the purposes of Part XIII, includes any debenture stock, bond, note and any other debt securities issued by a corporation or any other entity, whether constituting a charge or not, on the assets of the issuer but does not include —

- (a) a cheque, letter of credit, order for the payment of money or bill of exchange; or
- (b) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder 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 same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

“designated clearing house” means a person that is designated by the Authority under section 55(1) as a designated clearing house;

“director” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

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

“exempt market operator” means —

- (a) a corporation that is exempted under section 14(2);

- (b) a corporation declared under section 14(8) to be an exempt market operator; or
- (c) a corporation operating a market included in a class of markets in relation to which a declaration under section 14(9) is in force;

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

“financial instrument” includes any currency, currency index, interest rate instrument, interest rate index, share, share index, stock, stock index, debenture, bond index, a group or groups of such financial instruments, and such other financial instruments as the Authority may by order prescribe;

“financial year” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“firm” has the same meaning as in section 2(1) of the Business Registration Act (Cap. 32);

“foreign company” has the same meaning as in section 4(1) of the Companies Act;

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

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

- (a) a party (referred to in this definition as the franchisor) to the agreement or arrangement authorises or permits another party (referred to in this definition as 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 to it in the Second Schedule;

“futures contract” means —

(a) for the purposes of Part I of the First Schedule —

(i) a contract the effect of which is that —

- (A) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at that time; or
- (B) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time,



and includes a futures option transaction, but does not include such contract or class of contracts as the Authority may prescribe; or

(ii) such other contract or class of contracts as the Authority may prescribe;

(b) for the purposes of any other provision in this Act —

(i) a contract the effect of which is that —

(A) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at that time pursuant to the terms and conditions set out in the business rules of a futures market or pursuant to the business practices of a futures market; or

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

and includes a futures option transaction, but does not include such contract or class of contracts as the Authority may prescribe; or

(ii) such other contract or class of contracts as the Authority may prescribe;

“futures exchange” means an approved exchange in respect of the operation of its futures market;

“futures market” has the meaning given to it in Part I of the First Schedule;

“futures option transaction” means an option on a specified futures contract which is transacted in accordance with the business rules or practices of a futures exchange, recognised market operator or futures market on which the transaction is made;

“holding company” has the same meaning as in section 5(4) of the Companies Act (Cap. 50);

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

“limited liability partnership” has the same meaning as in section 2(1) of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

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

- (a) the admission to the official list of the corporation or overseas securities exchange, of corporations, governments, bodies unincorporate or other persons for the purpose of the quotation on the securities market of the corporation or overseas securities exchange of securities 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 —

- (i) by the corporation or overseas securities exchange or are contained in any of the constituent documents of the corporation or overseas securities exchange; or
- (ii) by another person and adopted by the corporation or overseas securities 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;

“market” has the meaning given to it in Part I of the First Schedule;

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

“newspaper” has the same meaning as in section 2 of the Newspaper and Printing Presses Act (Cap. 206);

“officer” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

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

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

“participant” means —

- (a) for the purposes of Part II, a person who may participate in one or more of the services provided by an approved exchange, a recognised market operator or an exempt market operator, in its capacity as an approved exchange, a recognised market operator or an exempt market operator, respectively;
- (b) for the purposes of Part III, a person who, under the business rules of a designated clearing house, may participate in one or more of the services provided by the designated clearing house in its capacity as a designated clearing house; 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 assigned to them in section 2(1) of the Limited Liability Partnerships Act 2005 (Act 5 of 2005);

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

- (a) Banking Act (Cap. 19);
- (b) Finance Companies Act (Cap. 108);
- (c) Financial Advisers Act (Cap. 110);
- (d) Insurance Act (Cap. 142);
- (e) Monetary Authority of Singapore Act (Cap. 186);
- (f) Money-changing and Remittance Businesses Act (Cap. 187); or
- (g) such other written law as the Authority may by order prescribe;

“principal”, in relation to a representative, means a person whom the representative is in the direct employment of,

acting for or by arrangement with, and for whom the representative carries out any regulated activity;

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

*[S 20/2012 wef 17/01/2012]*

“providing custodial services for securities” has the meaning given to it in the Second Schedule;

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

*[2/2009 wef 26/11/2010]*

“public company” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

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

*[2/2009 wef 26/11/2010]*

“quote”, in relation to securities and a securities market of an approved exchange or of a recognised market operator, means to display or provide, on the securities market of the approved exchange or recognised market operator, information concerning the particular prices or particular consideration at which offers or invitations to sell, purchase or exchange issued or prescribed securities are made on that securities 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 issued or prescribed securities;

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

“recognised business trust” means a business trust that is recognised by the Authority under section 282TA(1);

*[2/2009 wef 01/10/2012]*

“recognised market operator” means a corporation that is recognised by the Authority under section 8(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 same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

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

“related corporation” has the same meaning as in section 4(1) of the Companies Act;

“representative”, except for the purposes of Part XIII, means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise; and includes any officer of a corporation who performs for the corporation any such activity whether or not he is remunerated, and whether his 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 which is constituted as a corporation, the corporation; or
- (b) in the case of a scheme which is not constituted as a corporation, the manager for the scheme;

“securities” means —

- (a) debentures or stocks issued or proposed to be issued by a government;

- (b) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporate;
- (c) any right, option or derivative in respect of any such debentures, stocks or shares;
- (d) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
  - (i) the value or price of any such debentures, stocks or shares;
  - (ii) the value or price of any group of any such debentures, stocks or shares; or
  - (iii) an index of any such debentures, stocks or shares;
- (e) any unit in a collective investment scheme;
- (f) any unit in a business trust;  
*[2/2009 wef 20/04/2009]*
- (g) any derivative of a unit in a business trust; or  
*[2/2009 wef 20/04/2009]*
- (h) such other product or class of products as the Authority may prescribe,

but does not include —

- (i) futures contracts which are traded on a futures market;
- (ii) bills of exchange;
- (iii) promissory notes;  
*[2/2009 wef 20/04/2009]*
- (iv) certificates of deposit issued by a bank or finance company whether situated in Singapore or elsewhere; or
- (v) such other product or class of products as the Authority may prescribe as not being securities;

“securities exchange” means an approved exchange in respect of the operation of its securities market;

“securities financing” has the meaning given to it in the Second Schedule;

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

“securities market” has the meaning given to it in Part I of the First Schedule;

“share” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“subsidiary” has the same meaning as in section 5 of the Companies Act;

“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;

*[2/2009 wef 19/11/2012]*

“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 a securities 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;  
*[2/2009 wef 29/07/2009]*
- (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 a securities 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 a securities 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 (Cap. 50); or
- (ii) in the case of a corporation all or any of the shares of which are listed for quotation on a securities 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 in section 99F, and “temporary representative” means a temporary representative in respect of any type of regulated activity;

*[2/2009 wef 26/11/2010]*

“trading in futures contracts” has the meaning given to it in the Second Schedule;

“transaction information” means information relating to —

- (a) offers or invitations to purchase, sell, or exchange securities or futures contracts;
- (b) executed transactions in securities or futures contracts; or
- (c) transactions cleared or settled by a designated clearing house;

“treasury share” —

- (a) in relation to a company, has the same meaning as in section 4(1) of the Companies Act (Cap. 50); and
- (b) in relation to a corporation (other than a company), means any share equivalent to a treasury share in a company;

*[2/2009 wef 19/11/2012]*

“trustee-manager” —

- (a) in relation to a registered business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);
- (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, 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 282TA(1), means the entity proposed to be managing and operating the trust, by whatever name called and whether incorporated or not;

*[2/2009 wef 19/11/2012]*

“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 same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

“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;

*[2/2009 wef 19/11/2012]*

“user”, in relation to an approved exchange or a designated clearing house, means a person who is —

- (a) a member; or
  - (b) a customer of a member,
- of the approved exchange or designated clearing house;

“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;

“voting share” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

*[2/2009 wef 19/11/2012]*

“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 wef 19/11/2012]*

*[16/2003; 5/2004; 31/2004; 1/2005; 5/2005]*

(2) Any reference in this Act to the affairs of a corporation shall, unless the contrary intention appears, 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 the

generality of 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 arrangement referred to in section 210 of the Companies Act made between the corporation and another person or other persons is being administered; or
  - (iv) the corporation is being wound up,and without limiting the generality of 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).

(3) Where the name of a corporation referred to in this Act is changed pursuant to the Companies Act (Cap. 50), the change of name shall 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) he 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 wef 19/11/2012]*

(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) he 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 wef 19/11/2012]

(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 wef 19/11/2012]

### **Associated person**

**3.—**(1) Unless the context otherwise requires, any reference in this Act to a person associated with another person shall be construed as 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, that the first-mentioned person shall not be

considered to be so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) A person shall not be 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 furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person;
- (b) that one of those persons, a customer, gives specific instructions to the other, whose ordinary business includes dealing in securities, trading in futures contracts or leveraged foreign exchange trading, 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 the other 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 the other;
- (d) that one of those persons has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a corporation.

### **Interest in securities**

4.—(1) Subject to this section, a person has an interest in securities if he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those securities.

(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 is, or is capable of being made, subject to restraint or restriction.

(3) Where any property held in trust consists of or includes securities and a person knows, or has reasonable grounds for believing, that he has an interest under the trust, he shall be deemed to have an interest in those securities.

(4) Where a corporation has, or is by the provisions of this section deemed to have, an interest in a security 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 a person; or

(b) a person has a controlling interest in the corporation, that person shall be deemed to have an interest in that security.

(5) Where a corporation has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a security and —

(a) a person is;

(b) the associates of a person are; or

(c) a person and his 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, that person shall be deemed to have an interest in that security.

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

(a) a related corporation of the second-mentioned person;

(b) a person in accordance with whose directions, instructions or wishes that the second-mentioned person is accustomed or is under an obligation, whether formal or informal, to act in relation to the security referred to in subsection (4);

(c) 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 the second-mentioned person in relation to that security;

- (d) a corporation which is, or 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 the second-mentioned person in relation to that security; or
- (e) a corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the second-mentioned person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.

(7) A person shall be deemed to have an interest in a security in any one or more of the following circumstances:

- (a) where he has entered into a contract to purchase a security;
- (b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (c) where he has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
- (d) where he is entitled, otherwise than by reason of his 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 a security, not being a security of which he is the registered holder.

(8) A person shall be deemed to have an interest in a security if that security is held jointly with another person.

(9) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.

(10) There shall be disregarded —

- (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
- (b) an interest in a security if the interest is that of a person whose ordinary business includes the lending of money if he 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 if that interest is an interest held by him by reason of his 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 (Cap. 50); and
- (e) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as may be prescribed.

(11) An interest in a security shall not 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.

### **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; or
    - (B) 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 shall 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) a bank that is licensed under the Banking Act (Cap. 19);
- (ii) a merchant bank that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (iii) a finance company that is licensed under the Finance Companies Act (Cap. 108);
- (iv) a company or society registered under the Insurance Act (Cap. 142) as an insurer;
- (v) a company licensed under the Trust Companies Act 2005 (Act 11 of 2005);
- (vi) the Government;
- (vii) a statutory body established under any Act;
- (viii) a pension fund or collective investment scheme;
- (ix) the holder of a capital markets services licence for —
  - (A) dealing in securities;
  - (B) fund management;
  - (C) providing custodial services for securities;
  - (CA) real estate investment trust management;
  - (D) securities financing; or
  - (E) trading in futures contracts;
- (x) a person (other than an individual) who carries on the business of dealing in bonds with accredited investors or expert investors;
- (xi) the trustee of such trust as the Authority may prescribe, when acting in that capacity; or
- (xii) such other person as the Authority may prescribe.

*[1/2005; 11/2005]*



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

[1/2005]

### **Application**

**4B.** This Act does not apply to —

- (a) a body corporate approved as a commodity market under section 5 of the Commodity Trading Act (Cap. 48A);
- (b) a body corporate approved as a clearing house under section 9 of that Act; or
- (c) the holder of a licence issued under that Act when acting lawfully under that Act,

but only to the extent that the activities carried out by such person are regulated under that Act.

## PART II

### 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.

[1/2005]

#### *Division 1 — Establishment of Markets*

#### **Requirement for approval or recognition**

**6.—(1)** No person shall establish or operate a market, or hold himself out as operating a market, unless the person is —

- (a) an approved exchange; or

(b) a recognised market operator.

[1/2005]

(2) No person shall hold himself out —

(a) as an approved exchange unless he is an approved exchange; or

(b) as a recognised market operator unless he is a recognised market operator.

[1/2005]

(3) Except with the written approval of the Authority, no person other than an approved exchange shall 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 which resembles a title or description referred to in paragraph (a).

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

*Subdivision (1) — Approved exchange and recognised market operator*

**Application for approval or recognition**

7.—(1) A corporation may apply to the Authority to be —

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

[1/2005]

(2) An application made under subsection (1) shall be —

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

[1/2005]

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

[1/2005]

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

8.—(1) Where —

- (a) a corporation has made an application under section 7(1)(a);
- (b) a corporation which is a recognised market operator has made an application under section 11(1) to change its status to that of an approved exchange; or
- (c) the Authority has conducted a review under section 11(5) and has determined that a corporation would be more appropriately regulated as an approved exchange,

the Authority may approve the corporation as an approved exchange.

[1/2005]

(2) Where —

- (a) a corporation has made an application under section 7(1)(b);
- (b) a corporation which is an approved exchange has made an application under section 11(1) to change its status to that of a recognised market operator; or
- (c) the Authority has conducted a review under section 11(5) and has determined that a corporation would be more appropriately regulated as a recognised market operator,

the Authority may recognise the corporation as a recognised market operator.

[1/2005]

(3) Notwithstanding subsections (1) and (2), the Authority may, with the consent of the applicant —

- (a) treat an application under section 7(1)(a) as an application under section 7(1)(b) if it is of the opinion that the applicant would be more appropriately regulated as a recognised market operator; or
- (b) treat an application under section 7(1)(b) as an application under section 7(1)(a) if it is of the opinion that the applicant would be more appropriately regulated as an approved exchange.

[1/2005]

(4) The Authority may approve a corporation as an approved exchange under subsection (1) or recognise a corporation as a recognised market operator under subsection (2) subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing, including conditions or restrictions relating to —

- (a) the activities that the corporation may undertake;
- (b) the securities or futures contracts that may be traded on any market established or operated by the corporation; and
- (c) the nature of the investors or participants who may use, invest in or participate in the securities or futures contracts

traded on any market established or operated by the corporation.

[1/2005]

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

[1/2005]

(6) An approved exchange or a recognised market operator shall, for the duration of the approval or recognition, satisfy all conditions and restrictions that may be imposed on it under subsections (4) and (5).

[1/2005]

(7) The Authority may refuse to approve a corporation as an approved exchange or recognise a corporation as a recognised market operator if —

- (a) the corporation has not provided the Authority with such information 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,as the Authority may require;
- (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 an equivalent person 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 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;
- (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 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 which the corporation may carry on in connection with the establishment or operation of any market;
- (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 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 market;
- (o) the corporation does not satisfy the criteria prescribed under section 9 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.

[1/2005]

(8) Subject to subsection (9), the Authority shall not refuse to approve a corporation as an approved exchange or recognise a corporation as a recognised market operator under subsection (7) without giving the corporation an opportunity to be heard.

[1/2005]

(9) The Authority may refuse to approve a corporation as an approved exchange or recognise a corporation 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 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.

[1/2005]

(10) The Authority shall give notice in the *Gazette* of any corporation approved as an approved exchange under subsection (1) or recognised as a recognised market operator under subsection (2), and such notice may include the conditions or restrictions imposed by the Authority on the corporation under subsection (4)(b) in relation to the securities or futures contracts that may be traded on any market established or operated by the corporation.

[1/2005]

(11) Any applicant who is aggrieved by a refusal of the Authority to grant an approval under subsection (1) or a recognition under subsection (2) may, within 30 days after the applicant is notified of the decision, appeal to the Minister whose decision shall be final.

[1/2005]

(12) 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 thereof during which the offence continues after conviction.

[1/2005]



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

9.—(1) The Authority may prescribe the criteria which it may take into account for the purposes of deciding —

- (a) whether an applicant referred to in section 7(1) or 11(1) should be approved as an approved exchange or recognised as a recognised market operator;
- (b) whether an approved exchange or a recognised market operator that is subject to a review by the Authority under section 11(5) should be approved as an approved exchange or recognised as a recognised market operator; and
- (c) the conditions or restrictions that the Authority may impose under section 8(4) or (5).

[1/2005]

(2) Without prejudice to section 8 and subsection (1), the Authority may, for the purposes of recognising an operator of an overseas market as a recognised market operator under section 8(2), have regard, in addition to any criteria prescribed under subsection (1), to —

- (a) whether adequate arrangements exist for co-operation between the Authority and the financial services regulatory authority responsible for the supervision of the operator in the country or territory in which the head office or principal place of business of the operator is situated; and
- (b) whether the operator is, in the country or territory in which the head office or principal place of business of the operator 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.

[1/2005]

(3) In considering whether it is satisfied that the operator of an overseas market has met the requirements mentioned in subsection (2), 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 operator is situated; and
- (b) the rules and practices of the operator.

[1/2005]

(4) In this section, “operator of an overseas market” means a person whose head office is situated in a country or territory outside Singapore, and who is authorised to operate a market by a financial services regulatory authority of —

- (a) that country or territory; or
- (b) the country or territory in which the principal place of business of that person is situated.

[1/2005]

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

**10.**—(1) Every approved exchange and recognised market operator shall pay to the Authority such annual fees as may be prescribed in such manner as may be specified by the Authority.

[1/2005]

(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.

[1/2005]

### **Change in status**

**11.**—(1) A corporation which is an approved exchange or a recognised market operator may apply to the Authority to change its status in the manner referred to in subsection (6).

[1/2005]

(2) An application under subsection (1) shall be made in such form and manner as the Authority may prescribe.

[1/2005]

(3) An application made under subsection (1) shall be accompanied by a non-refundable prescribed application fee, which shall be paid in the manner specified by the Authority.

[1/2005]

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

[1/2005]

(5) The Authority may, from time to time, on its own initiative, review the status of a corporation that is an approved exchange or a recognised market operator under this Part in accordance with the criteria prescribed under section 9.

[1/2005]

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

- (a) where the corporation is an approved exchange, withdraw the approval as such and recognise the corporation as a recognised market operator under section 8(2);
- (b) where the corporation is a recognised market operator, withdraw the recognition as such and approve the corporation as an approved exchange under section 8(1); or
- (c) make no change to the status of the corporation as an approved exchange or a recognised market operator.

[1/2005]

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

[1/2005]

(8) Where a review of the status of a corporation is conducted by the Authority on its own initiative under subsection (5), the Authority shall not exercise its powers under subsection (6)(a) or (b) without giving the corporation an opportunity to be heard.

[1/2005]

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

[1/2005]

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

**12.—**(1) An approved exchange or a recognised market operator which intends to cease operating its market or, where it operates more than one market, all of its 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.

[1/2005]

(2) The Authority may cancel the approval or recognition if it is satisfied that the approved exchange or recognised market operator referred to in subsection (1) has ceased operating its market or all of its markets, as the case may be.

[1/2005]

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

**13.—**(1) The Authority may revoke any approval of a corporation as an approved exchange under section 8(1) or any recognition of a corporation as a recognised market operator under section 8(2) if —

- (a) there exists a ground under section 8(7) on which the Authority may refuse an application;
- (b) the corporation does not commence operating its market or, where it operates more than one market, all of its markets, within 12 months from the date on which it was granted the approval under section 8(1) or recognition under section 8(2), as the case may be;
- (c) the corporation ceases to operate its market or, where it operates more than one market, all of its 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 in this Act;
- (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.

[1/2005]

(2) Subject to subsection (3), the Authority shall not revoke under subsection (1) any approval under section 8(1) or recognition under section 8(2) that was granted to a corporation without giving the corporation an opportunity to be heard.

[1/2005]

(3) The Authority may revoke an approval under section 8(1) or a recognition under section 8(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 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.

[1/2005]

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

- (a) it has ceased to operate the 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 market under a direction issued by the Authority under section 46.

[1/2005]

(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 shall be final.

[1/2005]

(6) Notwithstanding the lodging of an appeal under subsection (5), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

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

[1/2005]

(8) Any revocation of approval or recognition of a corporation referred to in subsection (1) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into on a market operated by the corporation, whether the agreement, transaction or arrangement was entered into before or after the revocation of the approval or recognition; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[1/2005]

(9) The Authority shall give notice in the *Gazette* of any revocation of approval or recognition referred to in subsection (1).

[1/2005]

*Subdivision (2) — Exempt market operator*

**Power of Authority to exempt corporations from approval or recognition**

14.—(1) A corporation that wishes to establish or operate a market may apply to the Authority, in such form and manner as the Authority may prescribe, to be exempted from the requirement under

section 6(1) to be an approved exchange or a recognised market operator.

[1/2005]

(2) The Authority may exempt a corporation referred to in subsection (1) from the requirement under section 6(1) if, in the opinion of the Authority, the objectives specified in section 5 can be achieved without regulating the corporation as an approved exchange or a recognised market operator.

[1/2005]

(3) An application made under subsection (1) shall be accompanied by a non-refundable prescribed application fee, which shall be paid in the manner specified by the Authority.

[1/2005]

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

[1/2005]

(5) The Authority may, by notice in writing, impose on a corporation exempted under subsection (2) such conditions or restrictions relating to the exemption as the Authority may think fit, including conditions or restrictions relating to —

- (a) the activities that the corporation may undertake;
- (b) the securities or futures contracts that may be traded on any market established or operated by the corporation; and
- (c) the nature of the investors or participants who may use, participate or invest in the securities or futures contracts traded on any market established or operated by the corporation.

[1/2005]

(6) The Authority may, at any time, by notice in writing to a corporation exempted under subsection (2), vary any condition or restriction referred to in subsection (5) or impose such further condition or restriction relating to the exemption as the Authority may think fit.

[1/2005]

(7) The Authority shall give notice in the *Gazette* of any corporation exempted under subsection (2), and such notice may include the conditions or restrictions imposed by the Authority on the corporation under subsection (5)(b) in relation to the securities or futures contracts that may be traded on any market established or operated by the corporation.

[1/2005]

(8) The Authority may —

- (a) exempt any corporation operating any market from the requirement under section 6(1) to be an approved exchange or a recognised market operator;
- (b) by order published in the *Gazette*, declare that corporation to be an exempt market operator; and
- (c) by notice in writing to that corporation, impose such conditions or restrictions relating to the exemption as the Authority may think fit.

[1/2005]

(9) The Authority may —

- (a) exempt corporations operating any class of markets from the requirement under section 6(1) to be approved exchanges or recognised market operators, subject to such conditions or restrictions as the Authority may think fit to impose by regulations; and
- (b) by order published in the *Gazette*, declare such corporations to be exempt market operators.

[1/2005]

(10) An exempt market operator shall comply with all conditions or restrictions imposed on it under subsection (5), (6) or (8), as the case may be.

[1/2005]

(11) Any corporation which contravenes subsection (10) 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 thereof during which the offence continues after conviction.

[1/2005]



**Power of Authority to revoke exemption**

**15.—**(1) The Authority may revoke any exemption granted to a corporation under section 14(2), (8) or (9) if —

- (a) the corporation does not commence operating its market or, where it operates more than one market, all of its markets, within 12 months from the date on which it was granted the exemption;
- (b) the corporation ceases to operate its market or, where it operates more than one market, all of its markets;
- (c) the corporation contravenes —
  - (i) any condition or restriction relating to the exemption;
  - (ii) any direction issued to it by the Authority under this Act; or
  - (iii) any provision in this Act;
- (d) the Authority is of the opinion that the corporation has operated in a manner that is contrary to the interests of the public;
- (e) the corporation is in the course of being wound up or otherwise dissolved, 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 corporation;
- (g) 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;
- (h) the Authority is of the opinion that the corporation would be more appropriately regulated as an approved exchange or a recognised market operator; or
- (i) any information or document provided by the corporation to the Authority is false or misleading.

[1/2005]

(2) Subject to subsection (3), the Authority shall not revoke under subsection (1) any exemption granted to a corporation without giving the corporation an opportunity to be heard.

[1/2005]

(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 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.

[1/2005]

(4) For the purposes of subsection (1)(b), a corporation shall be deemed to have ceased to operate its market if —

- (a) it has ceased to operate the 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 market under a direction issued by the Authority under section 46.

[1/2005]

(5) A 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 shall be final.

[1/2005]

(6) Notwithstanding the lodging of an appeal under subsection (5), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he considers necessary

to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(8) Any revocation under subsection (1) of an exemption granted to a corporation shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into on a market operated by the corporation, whether the agreement, transaction or arrangement was entered into before or after the revocation of the exemption; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[1/2005]

(9) The Authority shall give notice in the *Gazette* of any revocation of an exemption referred to in subsection (1).

[1/2005]

### *Division 2 — Regulation of Approved Exchanges*

#### *Subdivision (1) — Obligations of approved exchanges*

#### **General obligations**

**16.—(1)** An approved exchange shall, in respect of every market it operates —

- (a) as far as is reasonably practicable, ensure that the market is fair, orderly and transparent;
- (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 fair and objective, and that are designed to ensure the orderly functioning of the 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) a fair, orderly and transparent market in securities or futures contracts that are traded through its facilities; 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 market;
  - (ii) to meet contingencies or disasters; and
  - (iii) to provide adequate security arrangements; and
- (h) ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

[1/2005]

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

[1/2005]

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

**16A.—**(1) Without prejudice to the generality of section 16(1)(b), an approved exchange shall —

- (a) ensure that the systems and controls concerning the assessment and management of risks to every market that it operates are adequate and appropriate for the scale and nature of its operations;
- (b) obtain the Authority’s approval to the limits which it intends to establish on the number of open positions which may be held by any person under any futures contract traded on a futures market that it operates, and vary those limits only in a manner approved by the Authority; and

(c) obtain the Authority's approval if it does not intend to establish limits on the number of open positions which may be held by any person under any futures contract traded on a futures market that it operates.

(2) Nothing in subsection (1) shall preclude an approved exchange from —

(a) establishing, in respect of open positions which may be held by any person under any futures contract traded on a futures market that it operates, different position limits for different futures contracts, or for different months or days in the period the positions may be held; or

(b) establishing limits whether on long or short positions, and whether on a net or gross basis.

(3) An 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 thereof during which the offence continues after conviction.

(4) Any person who wilfully exceeds any position limit established or varied by an approved exchange shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

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

**17.—**(1) An approved exchange shall, 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 7(1) or 11(1);

(b) the carrying on of any business by the approved exchange other than —

(i) the business of operating a market;

(ii) a business incidental to operating a market; or

- (iii) such business or class of businesses as the Authority may prescribe;
- (c) the acquisition by the approved exchange of a substantial shareholding in a corporation which does not carry on —
  - (i) the business of operating a market;
  - (ii) a business incidental to operating a market; or
  - (iii) such business or class of businesses as the Authority may prescribe;
- (d) the approved exchange becoming aware of a 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;
- (e) the approved exchange reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved exchange;
- (f) any other matter that the Authority may prescribe by regulations or specify by notice in writing to the approved exchange.

[1/2005]

(2) Without prejudice to the generality of section 46(1), the Authority may, at any time after receiving a notification referred to in subsection (1), issue directions to the approved exchange —

- (a) where the notification relates to a matter referred to in subsection (1)(b) —
  - (i) to cease carrying on the first-mentioned business referred to in subsection (1)(b); or
  - (ii) to carry on the first-mentioned business 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 46(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 46(1),

and the approved exchange shall comply with such directions.

[1/2005]

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

**18.** An approved exchange shall maintain a record of all transactions effected through its facilities in such form and manner as the Authority may prescribe, including —

- (a) the extent to which the record includes details of each transaction; and
- (b) the period of time that the record is to be maintained.

[1/2005]

### **Obligation to submit periodic reports**

**19.** An approved exchange shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

[1/2005]

### **Obligation to assist Authority**

**20.** An approved exchange shall 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 —
  - (i) relating to the business of the approved exchange; or
  - (ii) in respect of such dealings in securities or trading in futures contracts; and
- (b) such other information,

as the Authority may require for the proper administration of this Act.  
[1/2005]

### **Obligation to maintain confidentiality**

**21.—**(1) Subject to subsection (2), an approved exchange and its officers and employees shall 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.

[1/2005]

(2) Subsection (1) shall 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 furnished; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[1/2005]

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

[1/2005]



**Penalties under this Subdivision**

**22.** Any approved exchange which contravenes section 16(1), 17, 18, 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 thereof during which the offence continues after conviction.

[1/2005]

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

**23.—(1)** Without limiting the generality of sections 16 and 45 —

- (a) the Authority may prescribe the matters that an approved exchange shall make provision for in the business rules or listing rules of the approved exchange; and
- (b) the approved exchange shall make provision for those matters in its business rules or listing rules, as the case may be.

[1/2005]

(2) An approved exchange shall not make any amendment to its business rules or listing rules unless it complies with such requirements as the Authority may prescribe.

[1/2005]

(3) In this Subdivision, any reference to an amendment to a business rule or listing rule shall 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

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

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

- (a) between the approved exchange and each member; and
- (b) between each member and every other member.

[1/2005]

(2) The approved exchange and each member shall be deemed 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.

[1/2005]

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

**25.**—(1) Where any person who 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 High Court may, on the application of the Authority, an approved exchange or a person aggrieved by the failure, and after giving the first-mentioned person an opportunity to be heard, make an order directing the first-mentioned person to comply with, observe, enforce or give effect to those business rules or listing rules.

[1/2005]

(2) A person against whom an order under subsection (1) may be made shall be —

- (a) a corporation which —
  - (i) has been admitted to the official list of an approved exchange; and
  - (ii) has not been removed from that official list;
- (b) a person associated with a corporation which —
  - (i) has been admitted to the official list of an approved exchange; and
  - (ii) has not been removed from that official list,

to the extent to which the business rules or listing rules purport to apply to him; or

(c) an approved exchange.

[1/2005]

(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).

[1/2005]

### **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 shall 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.

[1/2005]

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

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

**27.—(1)** No person shall enter into any agreement to acquire shares in an approved exchange by virtue of which he 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.

[1/2005]

(2) No person shall become —

(a) a 12% controller; or

(b) a 20% controller,

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

[1/2005]

(3) In subsection (2) —

“12% controller” means a person, not being a 20% controller, who alone or together with his 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 his 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.

[1/2005]

(4) In this section —

(a) a person holds a share if —

- (i) he is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act (Cap. 50); or
- (ii) he 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;

(b) a reference to the control of a percentage of the votes in an approved exchange shall 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, step-son or step-daughter or a brother or sister of *B*;
- (ii) *A* is a corporation 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* or, where *B* is a corporation, of the directors of *B*;

- (iii) *B* is a corporation 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 *A* or, where *A* is a corporation, of the directors of *A*;
- (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) *B* 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 *A*;
- (vi) *A* is a related corporation of *B*;
- (vii) *A* is a corporation in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *A*;
- (viii) *B* is a corporation in which *A*, alone or together with other associates of *A* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *B*; or
- (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 exchange.

[1/2005]

(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.

[1/2005]

(6) Without prejudice to 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 notice in writing, 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.

[1/2005]

(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 notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association or other constituent document or documents of the approved exchange —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the approved exchange shall 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 exchange, the approved exchange shall 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.

[1/2005]

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

[1/2005]

(9) Any payment made by an approved exchange in contravention of subsection (7)(c) shall be deemed to be null and void, and a person

to whom a direction has been issued under subsection (6) shall immediately return the payment he has received to the approved exchange.

[1/2005]

(10) The Authority may 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 imposed by the Authority.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

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

**28.—**(1) No approved exchange shall appoint a person as its chairman, chief executive officer or director unless the approved exchange has obtained the approval of the Authority.

[1/2005]

(2) The Authority may, by notice in writing, 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 shall comply with the notice.

[1/2005]

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

[1/2005]

(4) Without prejudice to the generality of section 45 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 notice in writing.

[1/2005]

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

[1/2005]

(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 —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

(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.

[1/2005]

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



chairman, chief executive officer, director or person referred to in the notice issued by the Authority under subsection (2).

[1/2005]

(9) Without prejudice to the generality of section 45, the Authority may make regulations relating to the composition and duties of the board of directors or any committee of an approved exchange.

[1/2005]

(10) 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.

[1/2005]

(11) The Authority may exempt any approved exchange or class of approved exchanges from the requirement under subsection (1) or (8), subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

(12) 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 thereof during which the offence continues after conviction.

[1/2005]

### **Power of Authority to approve instruments, contracts and transactions**

**29.—**(1) No approved exchange shall, without the approval of the Authority, list, de-list or permit the trading of —

- (a) any futures contract;
- (b) any right, option or derivative in respect of any debentures, stocks or shares;
- (c) any right under a contract for differences or under any other contract the purpose or purported purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
  - (i) the value or price of any debentures, stocks or shares;

- (ii) the value or price of any group of debentures, stocks or shares; or
- (iii) an index of any debentures, stocks or shares; or
- (d) such other instrument, contract or transaction, or class of instruments, contracts or transactions as the Authority may prescribe,

on any market operated by the approved exchange.

[1/2005]

(2) The Authority may grant approval for an approved exchange to list, de-list or permit the trading of any instrument, contract or transaction, or any class of instruments, contracts or transactions, referred to in subsection (1), subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing to the approved exchange.

[1/2005]

(3) Any approved exchange which contravenes subsection (1) or any of the conditions or restrictions imposed under subsection (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 thereof during which the offence continues after conviction.

[1/2005]

### **Listing of approved exchanges on securities market**

**30.—**(1) The securities of an approved exchange shall not be listed for quotation on a securities market that is operated by the approved exchange or any of its related corporations unless the approved exchange and the operator of the securities 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 of the approved exchange on the securities market.

[1/2005]

(2) Where the securities of an approved exchange are listed for quotation on a securities market operated by the approved exchange or any of its related corporations, the listing rules of the securities market shall be deemed to allow the Authority to act in place of the operator of the securities market in making decisions and taking action, or to require the operator of the securities market to make decisions and to take action on behalf of the Authority, on —

- (a) the admission or removal of the approved exchange to or from the official list of the securities market; and
- (b) granting approval for the securities of the approved exchange to be, or stopping or suspending the securities of the approved exchange from being, listed for quotation or quoted on the securities market.

[1/2005]

(3) The Authority may, by notice in writing to the operator of the securities market —

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

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

#### *Subdivision (4) — Powers of Authority*

### **Power of Authority to appoint adviser**

**31.—**(1) Where —

- (a) an approved exchange 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 becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that an approved exchange —
  - (i) is carrying on its business in a manner likely to be detrimental to the objectives specified in section 5;
  - (ii) is or is likely to become insolvent or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments;
  - (iii) has contravened any of the provisions of this Act; or
  - (iv) has failed to comply with any condition attached to its approval as an approved exchange; or

(d) the Authority considers it in the public interest to do so, the Authority may appoint one or more persons as statutory advisers, on such terms and conditions as the Authority may specify, to advise the approved exchange on the proper management of such of the business of the approved exchange as the Authority may determine.

(2) Where the Authority has exercised its power under subsection (1), it may at any time do one or more of the following:

- (a) vary or revoke any appointment made by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) appoint another statutory adviser in accordance with subsection (1) in place of or in addition to the statutory adviser earlier appointed;
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

(3) No action, suit or other legal proceedings shall lie against 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) The Authority may at any time fix the remuneration and expenses to be paid by an approved exchange to a statutory adviser appointed in relation to the approved exchange, whether or not the appointment has been terminated.

(5) The approved exchange shall reimburse the Authority any remuneration and expenses payable by the approved exchange to a statutory adviser and paid by the Authority to the statutory adviser.

### **Power of Authority in securities market**

**32.**—(1) Without prejudice to the generality of section 46, 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 units or derivatives of units in a business trust; or
- (c) particular units of a collective investment scheme,

on a securities market of an approved exchange —

- (i) in order to protect persons buying or selling the securities, units or derivatives of units in a business trust or units in a collective investment scheme; or
- (ii) in the interests of the public,

the Authority may give notice in writing to the approved exchange stating that it is of that opinion and setting out the reasons for its opinion.

[1/2005]

(2) If, after the receipt of the notice given under subsection (1), the approved exchange fails to take any action in relation to those securities, units or derivatives of units in a business trust or units in a collective investment scheme on that securities market and the Authority continues to be of the opinion that it is necessary to prohibit trading in those securities, units or derivatives of units in a business trust or units in a collective investment scheme on that securities

market, the Authority may, by notice in writing to the approved exchange, prohibit trading in those securities, units or derivatives of units in a business trust or units in a collective investment scheme on that securities market for such period, not exceeding 14 days, as is specified in the notice.

[1/2005]

(3) Where the Authority gives a notice to an approved exchange under subsection (2), the Authority shall —

(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 units or derivatives of units in a business trust, the trustee of the business trust; 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, furnish 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.

[1/2005]

(4) Any person who is aggrieved by any action taken by the Authority or an approved exchange under this section may, within 30 days after the person is notified of the action, appeal to the Minister whose decision shall be final.

[1/2005]

(5) Notwithstanding the lodging of an appeal under subsection (4), any action taken by the Authority or an approved exchange under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(6) The Minister may, when deciding an appeal under subsection (4), make such modification as he considers necessary to any action taken by the Authority or an approved exchange under

this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(7) Any approved exchange which permits trading in securities on the securities market of the approved exchange 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 thereof during which the offence continues after conviction.

[1/2005]

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

**33.—**(1) If an auditor of an approved exchange, in the course of the performance of his duties, becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved exchange to a material extent;
- (b) any matter which, in his 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 exchange, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors in securities or futures contracts,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

[1/2005]

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

[1/2005]

(3) Subsection (2) shall 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.

[1/2005]

(4) The Authority may impose all or any of the following duties on an auditor of an approved exchange:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his 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 his audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

[1/2005]

(5) The approved exchange shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).

[1/2005]

### **Emergency powers of Authority**

**34.**—(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 notice in writing an approved exchange to take such action as it considers necessary to maintain or restore orderly trading in securities or futures contracts or any class of securities or futures contracts.

[1/2005]

(2) Without prejudice to subsection (1), the actions which the Authority may direct an approved exchange to take shall include —

- (a) terminating or suspending trading on the approved exchange;



- (b) confining trading to liquidation of securities or futures contracts positions;
- (c) ordering the liquidation of all positions or any part thereof or the reduction in such positions;
- (d) limiting trading to a specific price range;
- (e) modifying trading days or hours;
- (f) altering conditions of delivery;
- (g) fixing the settlement price at which positions are to be liquidated;
- (h) requiring any person to act in a specified manner in relation to trading in securities or futures contracts or any class of securities or futures contracts;
- (i) requiring margins or additional margins for any securities or futures contracts; and
- (j) modifying or suspending any of the business rules of the approved exchange.

[1/2005]

(3) Where the approved exchange 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 securities or futures contract or class of securities or futures contracts to cater for the emergency;
- (b) set limits that may apply to market 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 may think fit to maintain or restore orderly trading in any securities or futures contracts or class of securities or futures contracts, or liquidation of any position in respect of any securities or futures contract or class of securities or futures contracts.

[1/2005]

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

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

[1/2005]

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

[1/2005]

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

[1/2005]

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority or an approved exchange under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority or an approved exchange under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(9) Any approved exchange 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 thereof during which the offence continues after conviction.

[1/2005]

### **Power of Authority to exempt approved exchanges from provisions of this Part**

**35.** The Authority may exempt an approved exchange or a class of approved exchanges from any of the provisions of this Part if it is satisfied that the non-compliance by such approved exchange or class of approved exchanges with such provision would not detract from the objectives specified in section 5, subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

#### *Subdivision (5) — Immunity*

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

**36.** No criminal or civil liability shall be incurred by —

- (a) an approved exchange; or
- (b) any person acting on behalf of an approved exchange, including —
  - (i) any director of the approved exchange; or
  - (ii) any member of any committee established by the 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 its obligations under this Act or the business rules or, where appropriate, listing rules of the approved exchange.

[1/2005]

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

### **General obligations**

**37.—(1)** A recognised market operator shall, in respect of every market which it operates —

- (a) as far as is reasonably practicable, ensure that the market is fair, orderly and transparent;
- (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; and
- (d) have sufficient financial, human and system resources —
  - (i) to operate a fair, orderly and transparent market;
  - (ii) to meet contingencies or disasters; and
  - (iii) to provide adequate security arrangements.

[1/2005]

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

[1/2005]

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

**38.** A recognised market operator shall, 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 7(1) or 11(1);
- (b) any change of a director or the chief executive officer of the recognised market operator;
- (c) the recognised market operator becoming aware of a 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;
- (d) any other matter that the Authority may prescribe by regulations or specify by notice in writing to the recognised market operator.

[1/2005]

**Obligation to maintain proper records**

**39.** A recognised market operator shall maintain a record of all transactions effected through its facilities in such form and manner as the Authority may prescribe, including —

- (a) the extent to which the record includes details of each transaction; and
- (b) the period of time that the record is to be maintained.

[1/2005]

**Obligation to submit periodic reports**

**40.** A recognised market operator shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

[1/2005]

**Obligation to assist Authority**

**41.** A recognised market operator shall 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 —
  - (i) relating to the business of the recognised market operator; or
  - (ii) in respect of such dealings in securities or trading in futures contracts; and

- (b) such other information,

as the Authority may require for the proper administration of this Act.

[1/2005]

**Power of Authority to approve instruments, contracts and transactions**

**42.—(1)** No recognised market operator shall, without the approval of the Authority, list, de-list or permit the trading of —

- (a) any futures contract;

- (b) any right, option or derivative in respect of any debentures, stock or shares;
- (c) any right under a contract for differences or under any other contract the purpose or purported purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
  - (i) the value or price of any debentures, stock or shares;
  - (ii) the value or price of any group of debentures, stock or shares; or
  - (iii) an index of any debentures, stock or shares; and
- (d) such other instrument, contract or transaction, or class of instruments, contracts or transactions, as the Authority may prescribe,

on any market operated by the recognised market operator.

[1/2005]

(2) The Authority may grant approval for any instrument, contract or transaction, or any class of instruments, contracts or transactions, referred to in subsection (1), subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing to the recognised market operator.

[1/2005]

(3) The recognised market operator shall comply with the conditions and restrictions imposed under subsection (2).

[1/2005]

### **Penalties under this Division**

**43.** Any recognised market operator which contravenes section 37(1), 38, 39, 40, 41 or 42(1) or (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 thereof during which the offence continues after conviction.

[1/2005]

### **Power of Authority to exempt recognised market operators from provisions of this Part**

**43A.**—(1) The Authority may exempt a recognised market operator or a class of recognised market operators from any of the provisions in this Part if it is satisfied that the non-compliance by such recognised market operator or class of recognised market operators with such provision would not detract from the objectives specified in section 5.

(2) Such exemption shall be subject to such conditions or restrictions as may be imposed by the Authority.

#### *Division 4 — General Powers of Authority*

### **Power of Authority to remove officers**

**44.**—(1) Where the Authority is satisfied that an officer of an approved exchange or a recognised market operator —

- (a) has wilfully contravened or wilfully caused that approved exchange or recognised market operator to contravene —
  - (i) this Act;
  - (ii) where applicable, its business rules; or
  - (iii) where applicable, its listing rules;
- (b) has, without reasonable excuse, failed to ensure compliance by that approved exchange or recognised market operator, a member of that approved exchange or recognised market operator, or a person associated with that member with —
  - (i) this Act;
  - (ii) where applicable, the business rules of that approved exchange or recognised market operator; or
  - (iii) where applicable, the listing rules of that approved exchange or recognised market operator;
- (c) has failed to discharge the duties or functions of his office or employment;

- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him 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 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 had 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 notice in writing direct that approved exchange or recognised market operator to remove the officer from his office or employment, and that approved exchange or recognised market operator shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

[1/2005]

(2) Without prejudice to 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 his 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 notice in writing.

[1/2005]

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

[1/2005]

(4) The Authority may direct an approved exchange or a recognised market operator to remove an officer from his office or employment under subsection (1) 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 —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

(5) Where the Authority directs an approved exchange or a recognised market operator to remove an officer from his office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

[1/2005]

(6) Any approved exchange or a 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 (1) 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 shall be final.

[1/2005]

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section, shall continue to have effect pending the decision of the Minister.

[1/2005]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(9) Subject to subsection (10), no criminal or civil liability shall be 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.

[1/2005]

(10) Any approved exchange or a recognised market operator 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 thereof during which the offence continues after conviction.

[1/2005]

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

**45.—**(1) Without prejudice to section 341, the Authority may make regulations relating to the exemption, recognition or approval of, and the requirements applicable to, persons who establish, operate or assist in establishing or operating markets.

[1/2005]

(1A) The Authority may also make regulations for the purpose of carrying out section 16A, including —

- (a) requiring an approved exchange to reckon specified positions for the purpose of determining if limits established or varied under section 16A(1) have been exceeded;
  - (b) requiring an approved exchange to take specified steps to ensure compliance with those limits; and
  - (c) specifying measures to manage any risks assumed by an approved exchange.
- (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, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

[1/2005]

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

**46.**—(1) The Authority may, if it thinks it necessary or expedient —

- (a) for ensuring fair, orderly and transparent markets;
- (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 as may be imposed by the Authority under section 8(4) or (5), 14(5), (6), (8) or (9), 17(2), 27(5) or (10), 28(11), 29(2), 35, 42(2) or 43A(2), or such other obligations or requirements under this Act or as may be prescribed by the Authority,

[2/2009 wef 29/07/2009]

issue directions, whether of a general or specific nature, by notice in writing, to an approved exchange, a recognised market operator or an exempt market operator, and the approved exchange, recognised market operator or exempt market operator shall comply with such directions.

[1/2005]

(2) Any approved exchange, a recognised market operator or an exempt market operator 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 thereof during which the offence continues after conviction.

[1/2005]

(3) For the avoidance of doubt, a direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

[1/2005]

### PART III

## CLEARING FACILITIES

### Objectives of this Part

47. The objectives of this Part are —

(a) to promote the safety and efficiency of clearing facilities that support systemically-important markets or form an integral part of the financial infrastructure; and

(b) to reduce systemic risk.

[1/2005]

### Interpretation of this Part

48.—(1) In this Part, unless the context otherwise requires —

“default proceedings” means proceedings or other action taken by a designated clearing house under its default rules;

“default rules”, in relation to a designated clearing house, means the business rules of the designated 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 his obligations for any unsettled or open market contract to which he is a party;

[2/2009 wef 29/07/2009]

“defaulter” means a participant who is the subject of any default proceedings;

“market charge” means a security interest, whether fixed or floating, granted in favour of a designated clearing house —

(a) over property held by or deposited with the designated clearing house; and

(b) to secure liabilities arising directly in connection with the designated clearing house ensuring the performance of a market contract;

“market collateral” means property held by, or deposited with, a designated clearing house for the purpose of securing liabilities arising directly in connection with the designated clearing house ensuring the performance of market contracts;

“market contract” means —

- (a) a contract subject to the business rules of a designated clearing house that is entered into between the designated 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 designated clearing house; or
- (b) a transaction which is being cleared or settled using the clearing facility of a designated clearing house and in accordance with the business rules of the designated 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) money, letters of credit, banker’s drafts, certified cheques, guarantees or other similar instruments;
- (b) securities;
- (c) futures contracts and any similar financial contract; or
- (d) other assets of value acceptable to a designated clearing house;

“relevant office holder” means —

- (a) the Official Assignee exercising his powers under the Bankruptcy Act (Cap. 20);
- (b) a person acting in relation to a company as its liquidator, its provisional liquidator, its receiver, its

receiver and manager, its judicial manager or an equivalent person; or

- (c) a person acting in relation to an individual as his trustee in bankruptcy, the interim receiver of his property or an equivalent person;

“settlement”, in relation to a market contract, includes partial settlement.

[1/2005]

(2) Where a charge is granted partly for the purpose specified in the definition of “market charge” and partly for any other purpose or purposes, the charge shall be treated as a market charge under this Part insofar as it has effect for that specified purpose.

[1/2005]

(3) Where collateral is granted partly for the purpose specified in the definition of “market collateral” and partly for any other purpose or purposes, the collateral shall be treated as market collateral under this Part insofar as it has been provided for that specified purpose.

[1/2005]

(4) References in this Part to the law of insolvency are references to —

- (a) the Bankruptcy Act;
- (b) Parts VIIIA, IX and X of the Companies Act (Cap. 50); and
- (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 (Cap. 19).

[1/2005]

(5) References in this Part to settlement, in relation to a market contract, are references to the discharge of the rights and liabilities of the parties to the market contract, whether by performance, compromise or otherwise.

[1/2005]

*Division 1 — Establishment of Clearing Facilities***Requirement to notify**

**49.—**(1) Subject to subsection (2), no person shall establish or operate a clearing facility unless that person has notified the Authority of its intent to establish or operate a clearing facility at least 60 business days prior to the establishment, or commencement of operation, of the clearing facility.

[1/2005]

(2) A person may apply to the Authority to reduce the period referred to in subsection (1) and the Authority may, in its discretion and in relation only to that person, substitute such other period as may be determined by the Authority in place of the period referred to in subsection (1).

[1/2005]

(3) The notice referred to in subsection (1) shall provide information in such form and manner as may be prescribed by the Authority.

[1/2005]

(4) The application referred to in subsection (2) shall provide information in such form and manner as may be prescribed by the Authority.

[1/2005]

(5) The Authority may require a person providing the notice referred to in subsection (1) to furnish the Authority with such information or documents as the Authority considers necessary in relation to the notice.

[1/2005]

(6) In subsection (1), “business day” has the same meaning as in section 4(1) of the Companies Act (Cap. 50).

[1/2005]

(7) 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 thereof during which the offence continues after conviction.

[1/2005]

(8) 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 thereof during which the offence continues after conviction.

[1/2005]

### **Provision of information to Authority**

**50.**—(1) A person operating a clearing facility shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

[1/2005]

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

[1/2005]

### **Notification of change of particulars**

**51.**—(1) A person operating a clearing facility shall, no later than 14 days after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) a change of its chief executive officer;
- (b) a change of the address of the principal place of business at which it carries on the business of operating a clearing facility;
- (c) a material change in the business of the clearing facility;
- (d) an intention to cease operations of the clearing facility;
- (e) such other matter as the Authority may prescribe.

[1/2005]

(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 and, in the case of a continuing offence, to a further fine not



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

[1/2005]

### **Obligation to assist Authority**

**52.—**(1) A person operating a clearing facility shall 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 —

(i) relating to the business of the clearing facility; or

(ii) in respect of any transaction or class of transactions cleared or settled by the clearing facility; and

(b) such other information,

as the Authority may require for the proper administration of this Act.

[1/2005]

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

[1/2005]

### **Exemption**

**53.** Sections 49, 50 and 51 shall not apply to such persons or class of persons as may be prescribed by the Authority.

[1/2005]

### **Power to stop commencement or order cessation**

**54.—**(1) The Authority may, prior to the end of the notification period referred to in section 49(1) or such other period as may be substituted by the Authority under section 49(2), by notice in writing, order a person who has given notice under section 49(1) not to establish or commence operation of a clearing facility if —

(a) the person did not furnish the Authority with such information or documents as required under section 49(5);

- (b) any information or document provided by the person to the Authority is false or misleading; or
- (c) the Authority is of the opinion that it is in the interests of the public to do so.

[1/2005]

(2) The Authority may, by notice in writing, order a person to cease operating its clearing facility if —

- (a) the person has contravened any provision of this Act or any other written law in the course of operating its clearing facility;
- (b) the person provided any information or document to the Authority that is false or misleading;
- (c) in the opinion of the Authority, the person is operating the clearing facility in a manner that is likely to pose systemic risk to the financial system of Singapore;
- (d) the person is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (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 person;
- (f) the person 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) the Authority is of the opinion that it is in the interests of the public to do so.

[1/2005]

(3) Subject to subsection (4), the Authority shall not make an order under subsection (1) or (2) without giving the person an opportunity to be heard.

[1/2005]

(4) The Authority may order a person not to establish or commence operation of a clearing facility under subsection (1) or to cease operating its clearing facility under subsection (2) on any of the

following grounds without giving the person an opportunity to be heard:

- (a) the person 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 person;
- (c) the person 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.

[1/2005]

(5) Any person who is aggrieved by an order of the Authority made in relation to the person under subsection (1) or (2) may, within 30 days after the person is notified of that order, appeal to the Minister whose decision shall be final.

[1/2005]

(6) Notwithstanding the lodging of an appeal under subsection (5), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(7) The Minister may, when deciding an appeal under subsection (5), make such modification as he considers necessary to any action taken by the Authority, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(8) Any order made under subsection (2) shall 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 person, whether the agreement, transaction or arrangement was entered into before or after the order of the cessation; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[1/2005]

(9) Any person who contravenes an order made under subsection (1) or (2) 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 thereof during which the offence continues after conviction.

[1/2005]

*Division 2 — Designation of Persons Operating Clearing Facilities*

**Designation of persons operating clearing facilities**

**55.**—(1) The Authority may designate a person operating a clearing facility as a designated clearing house for the purposes of this Act, if it is satisfied that —

- (a) a disruption in the operations of the clearing facility could trigger, cause or transmit further systemic disruptions to capital markets or the financial system of Singapore;
- (b) a disruption in the operations of the clearing facility could affect public confidence in capital markets, financial institutions or the financial system of Singapore; or
- (c) it is in the interests of the public to do so.

[1/2005]

(2) The Authority shall give notice in the *Gazette* of any person designated under subsection (1).

[1/2005]

(3) A designation by the Authority under subsection (1) shall continue to have effect until it is withdrawn by the Authority.

[1/2005]

(4) The Authority shall not designate any person operating a clearing facility as a designated clearing house without giving that person an opportunity to be heard.

[1/2005]

(5) Any person operating a clearing facility who is aggrieved by a decision of the Authority to designate the person as a designated clearing house under subsection (1) may, within 30 days after the

person is notified of the decision, appeal to the Minister whose decision shall be final.

[1/2005]

(6) Notwithstanding the lodging of an appeal under subsection (5), the designation by the Authority under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(7) The Minister may, when deciding an appeal under subsection (5), direct that the Authority shall not designate the person as a designated clearing house, and such order shall have effect from the date of the decision of the Minister.

[1/2005]

### **Prohibition on holding out**

**56.**—(1) No person shall hold himself out as a designated clearing house unless he has been designated by the Authority under section 55(1).

[1/2005]

(2) 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 thereof during which the offence continues after conviction.

[1/2005]

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

**57.** Without affecting the generality of section 55, the Authority may have regard to the following matters in determining whether it is satisfied of the considerations in section 55(1):

- (a) the size and structure, or proposed size and structure, of the clearing facility;
- (b) the nature of the services provided, or to be provided, by the clearing facility;
- (c) the nature of the transactions cleared, or to be cleared, by the clearing facility;

- (d) the market where the transactions cleared through the clearing facility are traded or to be traded;
- (e) the nature of the investors or participants, or proposed investors or participants, who may use or have an interest in the clearing facility;
- (f) whether the person operating the clearing facility is otherwise regulated by the Authority under this Act or any other written law;
- (g) whether the clearing facility takes on counterparty risks, through novation or otherwise, in the clearing or settlement of transactions;
- (h) the parties who may be affected in the event that the clearing facility runs into difficulties;
- (i) the interests of the public; and
- (j) any other circumstances that the Authority may deem relevant.

[1/2005]

### **Withdrawal of designation**

**58.**—(1) The Authority may withdraw the designation of any designated clearing house at any time, on its own initiative or on the application of the designated clearing house, if the Authority is of the opinion that the considerations in section 55(1) are no longer valid or satisfied.

[1/2005]

(2) The Authority shall give notice in the *Gazette* of any withdrawal under subsection (1).

[1/2005]

(3) The Authority shall not withdraw on its own initiative the designation of any person operating a clearing facility as a designated clearing house without giving the person an opportunity to be heard.

[1/2005]

*Division 3 — Regulation of Designated Clearing Houses**Subdivision (1) — Obligations of designated clearing houses***General obligations**

**59.—(1)** A designated clearing house shall —

- (a) as far as is reasonably practicable, operate a safe and efficient clearing facility;
- (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 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) 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) enforce compliance by its members with its business rules;
- (g) 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; and
- (h) ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

[1/2005]

(2) The obligations imposed on the designated clearing house under this Act shall apply to all facilities for clearing or settlement operated by the designated clearing house.

[1/2005]

(3) Notwithstanding subsection (2), the Authority may by notice in writing exempt any clearing facility operated by a designated 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.

[1/2005]

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

[1/2005]

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

**60.**—(1) A designated clearing house shall, as soon as practicable after the occurrence of any of the following circumstances, notify the Authority of the circumstance:

- (a) the carrying on of any business by the designated clearing house other than —
  - (i) the business of operating a clearing facility;
  - (ii) a business incidental to operating a clearing facility;  
or
  - (iii) such business or class of businesses as the Authority may prescribe;
- (b) the acquisition by the designated clearing house of a substantial shareholding in a corporation which does not carry on —
  - (i) the business of operating a clearing facility;
  - (ii) a business incidental to operating a clearing facility;  
or
  - (iii) such business or class of businesses as the Authority may prescribe;



- (c) the designated clearing house becoming aware of a 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 designated clearing house to meet its financial obligations to the designated clearing house;
- (d) the designated clearing house reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the designated clearing house;
- (e) any other matter that the Authority may prescribe by regulations or specify by notice in writing to the designated clearing house.

[1/2005]

(2) Without prejudice to the generality of section 79(1), the Authority may, at any time after receiving a notification referred to in subsection (1), issue directions to the designated clearing house —

- (a) where the notification relates to a matter referred to in subsection (1)(a) —
  - (i) to cease carrying on the first-mentioned business referred to in subsection (1)(a); or
  - (ii) to carry on the first-mentioned business referred to in subsection (1)(a) 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 79(1); or
- (b) where the notification relates to a matter referred to in subsection (1)(b) —
  - (i) to dispose of the shareholding referred to in subsection (1)(b); 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 79(1),

and the designated clearing house shall comply with such directions.

[1/2005]

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

**61.—**(1) Without prejudice to the generality of section 59(1)(b), a designated clearing house shall —

- (a) ensure that the systems and controls concerning the assessment and management of risks to its clearing facility are adequate and appropriate for the scale and nature of its operations;
- (b) obtain the Authority's approval to the limits which it intends to establish on the number of open positions which may be held by any person under any futures contract cleared or settled with the designated clearing house, and vary those limits only in a manner approved by the Authority; and
- (c) obtain the Authority's approval if it does not intend to establish limits on the number of open positions which may be held by any person under any futures contract cleared or settled with the designated clearing house.

(2) Nothing in subsection (1) shall preclude a designated clearing house from —

- (a) establishing, in respect of open positions which may be held by any person under any futures contract cleared or settled with the designated clearing house, different position limits for different futures contracts, or for different months or days in the period the positions may be held; or
- (b) establishing limits whether on long or short positions, and whether on a net or gross basis.

(3) Any person who wilfully exceeds any position limit established or varied by a designated clearing house shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

**Obligation in relation to customers' money and assets held by designated clearing house**

**62.**—(1) A designated clearing house which accepts money or assets deposited with or paid to it by its members for or in relation to contracts of the customers of such members shall, in respect of all market contracts in relation to which money or assets are deposited with or paid to it (being market contracts which are cleared or settled by it), require each of its members to notify it in such manner as it may determine —

- (a) whether a market contract is a contract of a customer of the member; and
- (b) whether the money or assets being deposited with or paid to the designated clearing house is or are deposited or paid for or in relation to a contract of a customer of the member.

*[2/2009 wef 29/07/2009]*

*[1/2005]*

(2) Where a member has notified the designated clearing house under subsection (1) that the money or assets are deposited or paid for or in relation to a contract of a customer of the member, the designated clearing house shall —

- (a) subject to sections 63 and 64, ensure that such money is deposited in a trust account, or such assets are deposited in a custody account, to be held for the benefit of the customers of the member and disposed of or used only for or in relation to contracts of customers of the member;
- (b) ensure that such money or assets are kept separate from all money and assets received by the designated clearing house from members which have been notified by members under subsection (1) as not being deposited or paid for or in relation to contracts of customers of those members; and
- (c) keep books for money or assets deposited or paid for or in relation to contracts of customers of one member separate from books for money or assets deposited or paid for or in relation to contracts of customers of another member.

(3) Nothing in subsection (2)(a) shall prevent a designated clearing house from commingling all money or assets deposited pursuant to that provision in the same trust account or custody account, as the case may be.

(4) Where a designated clearing house has been convicted of an offence under section 70 for a contravention of subsection (2)(a) or (b), in so far as any money which has been deposited in a trust account, or any asset which has been deposited in a custody account, is used for any purpose other than —

(a) for or in relation to contracts of a customer of the member;  
or

(b) in accordance with sections 63 and 64,

the designated clearing house shall —

(i) in the case of money, repay the money to the trust account referred to in subsection (2)(a); or

(ii) in the case of assets —

(A) return the asset to the custody account referred to in subsection (2)(a); or

(B) if the asset cannot be returned to the custody account, deposit an amount of money which is equivalent to the monetary value of the asset at the time of the contravention of subsection (2)(a) or (b) in the trust account referred to in subsection (2)(a) for the benefit of the customers of the member.

### **Permissible use of customers' money and assets by designated clearing house**

**63.—**(1) Where a member of a designated clearing house fails to meet its obligations to the designated clearing house that arise from contracts of customers of the member (referred to in this section as the subject obligations), the designated clearing house may use any money or assets deposited or paid for or in relation to contracts of customers of the member and held by the designated clearing house (including any money deposited in the trust account and any assets deposited in the custody account referred to in section 62(2)(a))

(collectively referred to in this section as customers' money or assets) to meet the subject obligations, if —

- (a) the designated clearing house is of the opinion, formed in good faith, that the failure of the member to meet the subject obligations is directly attributable to the failure of any of the customers of the member to meet that customer's obligations under any market contract;
- (b) either —
  - (i) both of the following have been wholly utilised to meet the subject obligations:
    - (A) any money or assets deposited or paid for or in relation to contracts of the member itself and held by the designated clearing house;
    - (B) any money or assets deposited by the member with the designated clearing house as collateral or guarantee for the purpose of satisfying all obligations of the member to the designated clearing house (excluding any customers' money or assets); or
  - (ii) the designated clearing house has reasonable grounds for forming an opinion that the failure to use the customers' money or assets to meet the subject obligations may jeopardise the financial integrity of the designated clearing house;
- (c) the designated clearing house has made provision in its business rules for the use of customers' money or assets in the circumstances specified in paragraphs (a) and (b);
- (d) where the designated clearing house has made provision in its business rules for requirements additional to those in paragraphs (a) and (b), the additional requirements are not inconsistent with the requirements in those paragraphs; and

- (e) the money or assets are used in accordance with the provisions of the business rules referred to in paragraphs (c) and (d).

(2) A designated clearing house shall notify the Authority before using any such customers' money or assets in the circumstances specified in subsection (1).

**Permissible investments of customers' money and assets by designated clearing house**

**64.—**(1) Subject to subsection (2), a designated clearing house may invest any money or assets deposited or paid for or in relation to contracts of customers of a member and held by the designated clearing house in the course of its clearing or settlement activities, including any money deposited in the trust account and any assets deposited in the custody account referred to in section 62(2)(a), in any security, instrument or other form of investment arrangement as the Authority may prescribe.

[2/2009 wef 29/07/2009]

[1/2005]

(2) The designated clearing house shall seek the approval of the Authority before investing any such money or assets under subsection (1).

[1/2005]

(3) The designated clearing house seeking the approval of the Authority under subsection (2) shall satisfy the Authority —

- (a) that the management of the investments made by the designated clearing house is consistent with the principles of preserving principal and maintaining sufficient liquidity to meet the obligations of customers of members of the designated clearing house;
- (b) that prudential measures have been adopted to manage the risks in respect of the designated clearing house's investment activities; and
- (c) of any other matter which the Authority considers necessary for the sound management of the investments.

[1/2005]

(4) The Authority may grant the approval referred to in subsection (2) subject to such conditions or restrictions as the Authority may think fit.

[1/2005]

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

**65.**—(1) A designated clearing house shall maintain a record of all transactions effected through its clearing facility in such form and manner as the Authority may prescribe.

[1/2005]

(2) The matters which the Authority may prescribe under subsection (1) shall include —

- (a) the extent to which the record includes details of each transaction; and
- (b) the period of time that the record is to be maintained.

[1/2005]

### **Obligation to submit periodic reports**

**66.** A designated clearing house shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

[1/2005]

### **Obligation to assist Authority**

**67.** A designated clearing house shall 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 —
  - (i) relating to the business of the designated clearing house; or
  - (ii) in respect of any transaction or class of transactions cleared or settled by the designated clearing house; and
- (b) such other information,

as the Authority may require for the proper administration of this Act.  
[1/2005]

### **Obligation to maintain confidentiality**

**68.**—(1) Subject to subsection (2), a designated clearing house and its officers and employees shall maintain, and aid in maintaining, confidentiality of all user information that —

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

[1/2005]

(2) Subsection (1) shall 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 furnished; or
- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[1/2005]

(3) For the avoidance of doubt, nothing in this section shall be construed as preventing a designated clearing house from entering into a written agreement with a user which obliges the designated clearing house to maintain a higher degree of confidentiality than that specified in this section.

[1/2005]

### **Annual fees payable by designated clearing house**

**69.**—(1) Every designated clearing house shall pay to the Authority such annual fees as may be prescribed and in such manner as may be specified by the Authority.

[1/2005]

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

[1/2005]



**Penalties under this Subdivision**

**70.** Any designated clearing house which contravenes section 59(1), 60, 61(1), 62(2) or (4), 63(2), 64(2), 65, 66, 67 or 68(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 thereof during which the offence continues after conviction.

[2/2009 wef 29/07/2009]

[1/2005]

*Subdivision (2) — Rules of designated clearing houses***Business rules of designated clearing houses**

**71.—(1)** Without limiting the generality of sections 59 and 81S —

(a) the Authority may prescribe the matters that a designated clearing house shall make provision for in the business rules of the designated clearing house; and

(b) the designated clearing house shall make provision for these matters in its business rules.

[1/2005]

(2) A designated clearing house shall not make any amendment to its business rules unless it complies with such requirements as the Authority may prescribe.

[1/2005]

(3) In this Subdivision, any reference to an amendment to a business rule shall 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 rule or by any other notice issued by or on behalf of the designated clearing house.

[1/2005]

(4) Any designated 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 thereof during which the offence continues after conviction.

[1/2005]

**Business rules of designated clearing houses have effect as contract**

72.—(1) The business rules of a designated clearing house shall be deemed to be, and shall operate as, a binding contract —

- (a) between the designated clearing house and each issuer of securities;
- (b) between the designated clearing house and each participant;
- (c) between each issuer of securities and each participant; and
- (d) between each participant and every other participant.

[1/2005]

(2) The designated clearing house, each issuer of securities and each participant shall be 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 designated clearing house, issuer or participant, as the case may be.

[1/2005]

(3) In this section, “issuer”, in relation to any securities, means a person who issued or made available, or proposes to issue or make available, the securities, being securities that are cleared or settled by the designated clearing house.

[1/2005]

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

73.—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a designated clearing house fails to do so, the High Court may, on the application of the Authority, a designated clearing house or a person aggrieved by the failure, after giving the first-mentioned person an opportunity to be heard, make an order directing the first-mentioned person to comply with, observe, enforce or give effect to those business rules.

[1/2005]

(2) In this section, “person” includes a designated clearing house.  
[1/2005]

(3) This section is in addition to, and not in derogation of, any other remedies available to the aggrieved person referred to in subsection (1).

[1/2005]

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

**74.** Any failure by a designated clearing house to comply with this Act or its business rules in relation to a matter shall 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.

[1/2005]

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

### **Control of substantial shareholding in designated clearing houses**

**75.—(1)** No person shall enter into any agreement to acquire shares in a designated clearing house by virtue of which he would, if the agreement had been carried out, become a substantial shareholder of the designated clearing house without first obtaining the approval of the Authority to enter into the agreement.

[1/2005]

(2) No person shall become —

(a) a 12% controller; or

(b) a 20% controller,

of a designated clearing house without first obtaining the approval of the Authority.

[1/2005]

(3) In subsection (2) —

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

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

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

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

[1/2005]

(4) In this section —

(a) a person holds a share if —

- (i) he is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act (Cap. 50); or
- (ii) he 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;

(b) a reference to the control of a percentage of the votes in a designated clearing house shall 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 designated 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, step-son or step-daughter or a brother or sister of *B*;
- (ii) *A* is a corporation 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* or, where *B* is a corporation, of the directors of *B*;

- (iii) *B* is a corporation 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 *A* or, where *A* is a corporation, of the directors of *A*;
- (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) *B* 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 *A*;
- (vi) *A* is a related corporation of *B*;
- (vii) *A* is a corporation in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *A*;
- (viii) *B* is a corporation in which *A*, alone or together with other associates of *A* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *B*; or
- (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 designated clearing house.

[1/2005]

(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.

[1/2005]

(6) Without prejudice to 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 notice in writing, direct the transfer or disposal of all or any of the shares of a designated clearing house in which a substantial shareholder, 12% controller or 20% controller of the designated clearing house has an interest.

[1/2005]

(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 notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association or other constituent document or documents of the designated clearing house —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the designated clearing house shall 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 designated clearing house, the designated clearing house shall 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.

[1/2005]

(8) Any issue of shares by a designated clearing house in contravention of subsection (7)(b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (6) shall immediately return those shares to the designated clearing house, upon which the designated clearing house shall return to the person any payment received from him in respect of those shares.

[1/2005]

(9) Any payment made by a designated clearing house in contravention of subsection (7)(c) shall be deemed to be null and void, and a person to whom a direction has been issued under

subsection (6) shall immediately return the payment he has received to the designated clearing house.

[1/2005]

(10) The Authority may exempt —

(a) any person or class of persons; or

(b) any class or description of shares or interests in shares,

from subsection (1) or (2), subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

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

**76.—**(1) No designated clearing house shall appoint a person as its chairman, chief executive officer or director unless the designated clearing house has obtained the approval of the Authority.

[1/2005]

(2) The Authority may, by notice in writing, require a designated clearing house to obtain the approval of the Authority for the appointment of any person to any key management position or committee of the designated clearing house and the designated clearing house shall comply with the notice.

[1/2005]

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

[1/2005]

(4) Without prejudice to the generality of section 81S and 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 notice in writing.

[1/2005]

(5) Subject to subsection (6), the Authority shall not refuse an application for approval under this section without giving the designated clearing house an opportunity to be heard.

[1/2005]

(6) The Authority may refuse an application for approval on any of the following grounds without giving the designated 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 —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

(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.

[1/2005]

(8) A designated clearing house shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chairman, chief executive officer, director or person referred to in the notice issued by the Authority under subsection (2).

[1/2005]



(9) Without prejudice to the generality of section 81S, the Authority may make regulations relating to the composition and duties of the board of directors or any committee of a designated clearing house.

[1/2005]

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

[1/2005]

(11) The Authority may exempt any designated clearing house or a class of designated clearing houses from complying with subsection (1) or (8), subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

(12) Subject to subsection (11), any designated 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 thereof during which the offence continues after conviction.

[1/2005]

### **Listing of designated clearing houses on securities market**

**77.—**(1) The securities of a designated clearing house shall not be listed for quotation on a securities market that is operated by any of its related corporations unless the designated clearing house and the operator of the securities 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 of the designated clearing house.

[1/2005]

(2) Where the securities of a designated clearing house are listed for quotation on a securities market operated by any of its related corporations, the listing rules of the securities market shall be deemed to allow the Authority to act in place of the operator of the securities

market in making decisions and taking action, or to require the operator of the securities market to make decisions and to take action on behalf of the Authority, on —

- (a) the admission or removal of the designated clearing house to or from the official list of the securities market; and
- (b) granting approval for the securities of a designated clearing house to be, or stopping or suspending the securities of the designated clearing house from being listed for quotation or quoted on the securities market.

[1/2005]

(3) The Authority may, by notice in writing to the operator of the securities market —

- (a) modify the listing rules of the securities market for the purpose of their application to the listing of the securities of the designated clearing house for quotation or trading; or
- (b) waive the application of any listing rule of the securities market to the designated clearing house.

[1/2005]

(4) Any designated 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 thereof during which the offence continues after conviction.

[1/2005]

#### *Subdivision (4) — Powers of Authority*

### **Power to impose conditions or restrictions**

**78.—**(1) The Authority may impose on a designated clearing house such conditions or restrictions as it thinks fit by notice in writing, in addition to the obligations imposed on the designated clearing house under this Division, for the purposes of furthering the objectives specified in section 47.

[1/2005]

(2) The Authority may, at any time, by notice in writing to the designated clearing house, vary any condition or restriction as it may think fit.

[1/2005]

(3) Without affecting the generality of subsection (1) or (2), the conditions or restrictions that the Authority may impose include conditions or restrictions relating to —

- (a) the activities that the designated clearing house may undertake;
- (b) the products that may be cleared by the clearing facility;
- (c) the nature of investors or participants who may use or participate in the clearing facility; and
- (d) the requirement for the designated clearing house to operate as a corporation.

[1/2005]

(4) Any designated clearing house which contravenes any condition or restriction imposed 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 thereof during which the offence continues after conviction.

[1/2005]

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

**79.**—(1) The Authority may, if it thinks it necessary or expedient —

- (a) for ensuring the safe and efficient clearing and settlement of transactions;
- (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 as may be imposed by the Authority under section 60(2),

64(4), 75(5) or (10), 76(11), 78(1) or (2) or 81C, or such other obligations or requirements under this Act or as may be prescribed by the Authority,

issue directions by notice in writing either of a general or specific nature to a designated clearing house, and the designated clearing house shall comply with such directions.

[1/2005]

(2) Any designated clearing house 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 thereof during which the offence continues after conviction.

[1/2005]

(3) For the avoidance of doubt, a direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

[1/2005]

### **Power to order cessation of designated clearing houses**

**80.**—(1) The Authority may, by notice in writing to a designated clearing house, order the designated clearing house to cease operating any of its clearing facilities if —

- (a) the designated clearing house fails to comply with any obligation imposed on it under section 59(1);
- (b) the designated clearing house contravenes any provision of this Act or any condition or restriction imposed on it, or direction issued to it, by the Authority under any provision of this Act;
- (c) the designated clearing house is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (d) the designated clearing house operates in a manner that is, in the opinion of the Authority, contrary to the interests of the public;
- (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 designated clearing house;

- (f) the designated clearing house 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) the designated clearing house has provided any information or document to the Authority that is false or misleading.

[1/2005]

(2) The Authority shall give notice in the *Gazette* of any order made under subsection (1).

[1/2005]

(3) Subject to subsection (4), the Authority shall not order a designated clearing house to cease operating a clearing facility under subsection (1) without giving the designated clearing house an opportunity to be heard.

[1/2005]

(4) The Authority may order a designated clearing house to cease operating a clearing facility under subsection (1) on any of the following grounds without giving the designated clearing house an opportunity to be heard:

- (a) the designated clearing house 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 designated clearing house;
- (c) the designated clearing house 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.

[1/2005]

(5) Any designated clearing house that is aggrieved by a decision of the Authority made in relation to the designated clearing house under

subsection (1) may, within 30 days after the designated clearing house is notified of the decision, appeal to the Minister whose decision shall be final.

[1/2005]

(6) Notwithstanding the lodging of an appeal under subsection (5), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

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

[1/2005]

(8) The Authority may direct, by notice in writing, a designated clearing house, to whom an order to cease operations of its clearing facility has been made by the Authority under subsection (1), to take such action as it considers necessary, including any of the following actions:

- (a) ordering the liquidation of all positions or part thereof or the reduction in such positions;
- (b) altering 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;
- (e) modifying or suspending any of the business rules of the designated clearing house,

and the designated clearing house shall comply with that direction.

[1/2005]

(9) The Authority may modify any action taken by a designated clearing house under subsection (8), including the setting aside of that action.

[1/2005]

(10) Any person who is aggrieved by any action taken by the Authority or a designated clearing house under subsection (8) or (9) may, within 30 days after the person is notified of the action, appeal to the Minister whose decision shall be final.

[1/2005]

(11) Notwithstanding the lodging of an appeal under subsection (10), any action taken by the Authority or a designated clearing house under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(12) The Minister may, when deciding an appeal under subsection (10), make such modification as he considers necessary to any action taken by the Authority or a designated clearing house under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(13) Subject to any direction issued by the Authority under subsection (8) to the contrary, an order of cessation made under subsection (1) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into in connection with the use of the clearing facility operated by the designated clearing house, whether the agreement, transaction or arrangement was entered into before or after the order of the cessation; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

[1/2005]

(14) Any designated clearing house which contravenes an order of cessation made under 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 thereof during which the offence continues after conviction.

[1/2005]

(15) Any designated clearing house which fails to comply with a direction issued under subsection (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 thereof during which the offence continues after conviction.

[1/2005]

### **Power of Authority to appoint adviser**

**80A.—**(1) Where —

- (a) a designated 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) a designated clearing house becomes unable to meet its obligations, or is insolvent, or suspends payments;
  - (c) the Authority is of the opinion that a designated clearing house —
    - (i) is carrying on its business in a manner likely to be detrimental to the objectives specified in section 47;
    - (ii) is or is likely to become insolvent or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments;
    - (iii) has contravened any of the provisions of this Act; or
    - (iv) has failed to comply with any condition attached to its designation as a designated clearing house; or
  - (d) the Authority considers it in the public interest to do so,
- the Authority may appoint one or more persons as statutory advisers, on such terms and conditions as the Authority may specify, to advise the designated clearing house on the proper management of such of



the business of the designated clearing house as the Authority may determine.

(2) Where the Authority has exercised its power under subsection (1), it may at any time do one or more of the following:

- (a) vary or revoke any appointment made by the Authority in exercise of such power, on such terms and conditions as it may specify;
- (b) appoint another statutory adviser in accordance with subsection (1) in place of or in addition to the statutory adviser earlier appointed;
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

(3) No action, suit or other legal proceedings shall lie against 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) The Authority may at any time fix the remuneration and expenses to be paid by a designated clearing house to a statutory adviser appointed in relation to the designated clearing house, whether or not the appointment has been terminated.

(5) The designated clearing house shall reimburse the Authority any remuneration and expenses payable by the designated clearing house to a statutory adviser and paid by the Authority to the statutory adviser.

### **Emergency powers of Authority**

**81.—**(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 notice in writing a designated clearing house to take such action as it considers necessary to maintain or restore safe and efficient operations of the clearing facilities operated by the designated clearing house.

[1/2005]

(2) Without prejudice to subsection (1), the actions which the Authority may direct a designated clearing house to take include —

- (a) ordering the liquidation of all positions or part thereof or the reduction of such positions;
- (b) altering 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 designated clearing house.

[1/2005]

(3) Where a designated 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 market 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 safe and efficient operations of the clearing facilities operated by the designated clearing house.

[1/2005]

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

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

[1/2005]

(5) The Authority may modify any action taken by a designated clearing house under subsection (1), including the setting aside of that action.

[1/2005]

(6) Any person who is aggrieved by any action taken by the Authority or a designated clearing house under this section may, within 30 days after the person is notified of the action, appeal to the Minister whose decision shall be final.

[1/2005]

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority or a designated clearing house under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority or a designated clearing house under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(9) Any designated 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 thereof during which the offence continues after conviction.

[1/2005]

**Power of Authority to remove officers**

**81A.**—(1) Where the Authority is satisfied that an officer of a designated clearing house —

- (a) has wilfully contravened or wilfully caused that designated clearing house to contravene this Act or its business rules;
- (b) has, without reasonable excuse, failed to ensure compliance with this Act or the business rules of that designated clearing house, by that designated clearing house or a member of that designated clearing house or a person associated with that member;
- (c) has failed to discharge the duties or functions of his office or employment;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him 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 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 had 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 notice in writing direct that designated clearing house to remove the officer from his office or employment, and that designated clearing house shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

[1/2005]

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of a designated clearing house has failed to discharge the

duties or functions of his 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 notice in writing.

[1/2005]

(3) Subject to subsection (4), the Authority shall not direct a designated clearing house to remove an officer from his office or employment without giving the designated clearing house an opportunity to be heard.

[1/2005]

(4) The Authority may direct a designated clearing house to remove an officer from his office or employment under subsection (1) on any of the following grounds without giving the designated 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 —
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

(5) Where the Authority directs a designated clearing house to remove an officer from his office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

[1/2005]

(6) Any designated clearing house that is aggrieved by a direction of the Authority made in relation to the designated clearing house under subsection (1) may, within 30 days after the designated clearing house is notified of the direction, appeal to the Minister whose decision shall be final.

[1/2005]

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(8) The Minister may, when deciding an appeal under subsection (6), make such modifications as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by a designated 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.

[1/2005]

(10) Any designated 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 thereof during which the offence continues after conviction.

[1/2005]

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

**81B.**—(1) If an auditor of a designated clearing house, in the course of the performance of his duties, becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the designated clearing house to a material extent;
- (b) any matter which, in his 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 designated clearing house, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

[1/2005]

(2) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).

[1/2005]

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

[1/2005]

(4) The Authority may impose all or any of the following duties on an auditor of a designated clearing house:

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the designated 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 audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

[1/2005]

(5) The designated clearing house shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).

[1/2005]

### **Power of Authority to exempt designated clearing houses from provisions of this Part**

**81C.** The Authority may exempt a designated clearing house or a class of designated clearing houses from any of the provisions of this Part if it is satisfied that the non-compliance by such designated clearing house or class of designated clearing houses with such provision would not detract from the objectives specified in

section 47, subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

*Subdivision (5) — Immunity*

**Immunity from criminal or civil liability**

**81D.** No criminal or civil liability shall be incurred by —

- (a) a designated clearing house; or
- (b) any person acting on behalf of a designated clearing house, including —
  - (i) any director of the designated clearing house; or
  - (ii) any member of any committee established by the designated clearing house,

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 its or his obligations under this Act or the business rules of the designated clearing house, including its default rules.

[1/2005]

*Division 4 — Insolvency*

**Application of this Division**

**81E.** This Division shall apply to such transaction or class of transactions cleared or settled by any designated clearing house or class of designated clearing houses, and to such extent as may be prescribed by the Authority.

[1/2005]

**Proceedings of designated clearing house shall take precedence over law of insolvency**

**81F.—(1)** The following shall not be invalid to any extent at law by reason only of inconsistency with any 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 an equivalent person 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 a designated 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 a designated clearing house as 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.

[1/2005]

(2) A relevant office holder, or a court applying the law relating to insolvency in Singapore, shall not exercise his or its power to prevent, or interfere with —

- (a) the settlement of a market contract in accordance with the business rules of a designated clearing house, or proceedings or other action taken under those business rules; or
- (b) default proceedings.

[1/2005]

(3) Subsection (2) shall not operate to prevent a relevant office holder from recovering an amount under section 81L after the completion of a specified event referred to in section 81L(3).

[1/2005]

(4) Where a participant which is also a bank licensed under the Banking Act (Cap. 19) 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

(Cap. 231) shall have priority over unsecured liabilities of the bank accorded priority under the provisions of this Division.

[1/2005]

### **Supplementary provisions as to default proceedings**

**81G.**—(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 office that are affected by default proceedings if default proceedings have been, could be, or could have been, taken.

[1/2005]

(2) The functions of the relevant office holder shall be construed subject to an order made under subsection (1).

[1/2005]

(3) Sections 45, 74 and 76 of the Bankruptcy Act (Cap. 20) and sections 210, 258, 260, 262(3), 299(1) and 309 of the Companies Act (Cap. 50) shall not prevent, or interfere with, any default proceedings.

[1/2005]

### **Duty to report on completion of default proceedings**

**81H.**—(1) A designated clearing house shall, upon the conclusion of any default proceeding commenced by it, make a report on those proceedings stating in respect of each defaulter who is a subject of those proceedings —

(a) the net sum, if any, certified by the designated clearing house to be payable by or to the defaulter; or

(b) the fact that no sum is so payable,

as the case may be, and the designated clearing house may include in that report such other particulars in respect of those proceedings as it thinks fit.

[1/2005]

(2) A designated clearing house which has made a report under subsection (1) shall 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.

[1/2005]

(3) The designated clearing house shall 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.

[1/2005]

(4) Where a relevant office holder or defaulter receives under subsection (2) a report made under subsection (1), he shall, 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 all or any part of that report.

[1/2005]

(5) In subsections (2), (3) and (4), “report” includes a copy of a report.

[1/2005]

### **Net sum payable on completion of default proceedings**

**81I.**—(1) This section shall apply to any net sum certified under section 81H(1)(a) by a designated clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

[1/2005]

(2) Notwithstanding section 87 or 88 of the Bankruptcy Act (Cap. 20), and section 327 of the Companies Act (Cap. 50), where a receiving or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum as certified under section 81H(1)(a) shall —

- (a) be provable in the bankruptcy or winding up or payable to the relevant office holder, as the case may be; and

- (b) be taken into account, where appropriate, under section 88 of the Bankruptcy Act or section 327 of the Companies Act.

[1/2005]

**Disclaimer of onerous property, rescission of contracts, etc.**

**81J.**—(1) Section 110 of the Bankruptcy Act and section 332 of the Companies Act shall not apply —

- (a) to a market contract;
- (b) to a contract effected by a designated clearing house for the purpose of realising property provided as market collateral;
- (c) to a market charge; or
- (d) to any default proceedings.

[1/2005]

(2) Section 77 of the Bankruptcy Act and sections 259 and 299(1) of the Companies Act shall 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 a designated 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 a designated 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.

[1/2005]

**Adjustment of prior transactions**

**81K.**—(1) No order shall be made by a court under —

- (a) section 98 or 99 of the Bankruptcy Act (Cap. 20);
- (b) section 227T, 329 or 331 of the Companies Act (Cap. 50);  
or
- (c) section 73B of the Conveyancing and Law of Property Act (Cap. 61),

in relation to any matter to which this section applies.

[1/2005]

(2) The matters to which this section applies are —

- (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 a designated clearing house for the purpose of realising property provided as market collateral;
- (e) a disposition of property in accordance with the business rules of a designated 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.

[1/2005]

**Right of relevant office holder to recover certain amounts arising from certain transactions**

**81L.**—(1) Where a participant (referred to as the first participant) sells securities at an over-value to, or purchases securities at an under-value from, another participant (referred to as 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.

[1/2005]

(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 a designated clearing house and replaced by a market contract.

[1/2005]

(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.

[1/2005]

(4) In this section —

“specified event”, in relation to a 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 291(1) of the Companies Act (Cap. 50);
- (c) the summoning of a meeting of creditors in relation to the second participant or that person, as the case may be, under section 296 of the Companies Act;
- (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 making of a judicial management order by a court under Part VIIIA of the Companies Act 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 between —

- (a) the market value of the securities which are the subject of the sale or purchase; and
- (b) the value of the consideration for the sale or purchase,

as at the time the sale or purchase was entered into.

[1/2005; 42/2005]

**Application of market collateral not affected by certain other interest, etc.**

**81M.**—(1) This section shall have effect with respect to the application of a designated clearing house of property provided as market collateral (referred to in this section as the property).

[1/2005]

(2) The property may be applied in accordance with the business or default rules of a designated clearing house so far as it is necessary for it to be so applied notwithstanding —

- (a) any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the designated 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 designated clearing house in a trust account held for the benefit of a participant.

[1/2005]

(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 designated clearing house in accordance with its business or default rules.

[1/2005]

(4) Where a designated clearing house has power under this section to apply the property notwithstanding an interest, a right or a remedy, a person to whom the designated clearing house disposes of the property in accordance with its business or default rules shall take free from that interest, right or remedy.

[1/2005]

### **Enforcement of judgments over property subject to market charge, etc.**

**81N.**—(1) Where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgment or an 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 designated clearing house concerned.

[1/2005]

(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 shall not extend to that property.

[1/2005]



**Law of insolvency in other jurisdictions**

**81O.**—(1) Notwithstanding any other written law or rule of law, a court shall not recognise or give effect to —

- (a) an order of a court exercising jurisdiction under the law of insolvency in a place outside Singapore; or
- (b) an act of a person appointed in a place outside Singapore to perform a function under the law of insolvency in that place,

insofar as the making of the order or doing of the act would be prohibited under this Act for a court in Singapore or a relevant office holder, respectively.

[1/2005]

(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.

[1/2005]

**Participant to be party to certain transactions as principal**

**81P.**—(1) Where a participant —

- (a) in his capacity as such enters into any transaction (including a market contract) with a designated clearing house; and
- (b) but for this subsection or any provision in the business rules or default rules of a designated clearing house, would be a party to that transaction as agent,

then, notwithstanding any other written law or rule of law, as between, but only as between, the designated clearing house and any other person (including the participant and the person who is his principal in respect of that transaction), the participant shall for all purposes (including any action, claim or demand, whether civil or criminal) —

- (i) be deemed not to be a party to that transaction as agent; and
- (ii) be deemed to be a party to that transaction as principal.

[1/2005]

(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, notwithstanding any other written law or rule of law, a participant to whom paragraph (b) applies shall for all purposes (including any action, claim or demand, whether civil or criminal), except as between, but only as between, him and the person who is his principal in respect of that transaction —

- (i) be deemed not to be a party to the transaction as agent; and
- (ii) be deemed to be a party to the transaction as principal.

[1/2005]

### **Preservation of rights, etc.**

**81Q.** Except to the extent that it expressly provides, this Division shall 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.

[1/2005]

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

**81R.**—(1) No criminal or civil liability shall be incurred by —

- (a) a person discharging, by virtue of a delegation under the default rules of a designated clearing house, an obligation of the designated 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 last-mentioned person; and

- (ii) any member of any committee established by the last-mentioned person,

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 that obligation.

[1/2005]

(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 a designated clearing house, and reasonably believes or has reasonable grounds for believing that he is entitled to take that action, he shall not be liable to any person in respect of any loss or damage resulting from his action except insofar as the loss or damage, as the case may be, is caused by the negligence of the office holder.

[1/2005]

#### *Division 5 — General Powers of Authority*

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

**81S.**—(1) Without prejudice to section 341, the Authority may make regulations relating to requirements applicable to any person operating a clearing facility, whether or not the person has been designated by the Authority as a designated clearing house under section 55(1).

[1/2005]

(1A) The Authority may also make regulations for the purpose of carrying out section 61, including —

- (a) requiring a designated clearing house to reckon specified positions for the purposes of determining if limits established or varied under section 61(1) have been exceeded;
- (b) requiring a designated clearing house to take specified steps to ensure compliance with those limits; and
- (c) specifying measures to manage any risks assumed by a designated clearing house.

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

[1/2005]

### PART IIIA

#### 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;
  - (ii) designated 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.

[1/2005]

##### *Division 1 — Establishment of Approved Holding Companies*

##### Requirement for approval

**81U.—(1)** No corporation shall be the holding company of any approved exchange, designated clearing house, or corporation which is an approved holding company, unless the first-mentioned corporation is an approved holding company.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(3) The Authority may exempt a holding company of an approved exchange or a designated clearing house from subsection (1) if it is satisfied that the exemption would not detract from the objectives specified in section 81T.

[2/2009 wef 26/11/2010]

(4) The exemption shall be subject to such conditions or restrictions as may be imposed by the Authority.

[2/2009 wef 26/11/2010]

### **Application for approval**

**81V.**—(1) A corporation may apply to the Authority to be approved as an approved holding company.

[1/2005]

(2) An application made under subsection (1) shall be —

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

[1/2005]

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

[1/2005]

### **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

may think fit to impose by notice in writing, 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.

[1/2005]

(2) The Authority may, at any time, by notice in writing to the corporation, vary any condition or restriction or impose such further conditions or restrictions as the Authority may think fit.

[1/2005]

(3) An approved holding company shall, for the duration of the approval, satisfy all conditions and restrictions that may be imposed on it under subsections (1) and (2).

[1/2005]

(4) Subject to subsection (5), the Authority shall not refuse to approve a corporation under subsection (1) without giving the corporation an opportunity to be heard.

[1/2005]

(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.

[1/2005]

(6) The Authority shall give notice in the *Gazette* of any corporation approved under subsection (1).

[1/2005]

(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 shall be final.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

### **Annual fees payable by approved holding company**

**81X.**—(1) Every approved holding company shall pay to the Authority such annual fees as may be prescribed and in such manner as may be specified by the Authority.

[1/2005]

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

[1/2005]

### **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.

[1/2005]

(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.

[1/2005]

### **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, designated 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;
- (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.

[1/2005]

(2) Subject to subsection (3), the Authority shall 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.

[1/2005]

(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.

[1/2005]

(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 shall be final.

[1/2005]

(5) Notwithstanding the lodging of an appeal under subsection (4), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(6) The Minister may, when deciding an appeal under subsection (4), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(7) The Authority shall give notice in the *Gazette* of any revocation of approval referred to in subsection (1).

[1/2005]

### *Division 2 — Regulation of Approved Holding Companies*

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

**81ZA.**—(1) An approved holding company shall, 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 —

- (i) the activities of a holding company of any approved exchange, designated clearing house or corporation that is an approved holding company;
  - (ii) an activity incidental to being a holding company of any approved exchange, designated clearing house or corporation that is an approved holding company;  
or
  - (iii) such activity or class of activities as the Authority may prescribe;
- (c) the acquisition by the approved holding company of a substantial shareholding in a corporation which does not carry on —
  - (i) any activity of a holding company of any approved exchange, designated clearing house or corporation that is an approved holding company;
  - (ii) any activity incidental to being a holding company of any approved exchange, designated clearing house or corporation that is an approved holding company;  
or
  - (iii) such activity or class of activities as the Authority may prescribe;
- (d) any other matter that the Authority may prescribe by regulations or specify by notice in writing to the approved holding company.

[1/2005]

(2) Without prejudice to the generality of 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 first-mentioned activity referred to in subsection (1)(b); or
  - (ii) to carry on the first-mentioned 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 shall comply with such directions.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

### **Obligation to submit periodic reports**

**81ZB.**—(1) An approved holding company shall submit to the Authority such reports in such form, manner and frequency as the Authority may prescribe.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

**Obligation to assist Authority**

**81ZC.**—(1) An approved holding company shall 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

**Obligation to maintain confidentiality**

**81ZD.**—(1) Subject to subsection (2), an approved holding company and its officers and employees shall 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.

[1/2005]

(2) Subsection (1) shall 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 furnished; or

- (c) the disclosure of user information pursuant to any requirement imposed under any written law or order of court in Singapore.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(4) For the avoidance of doubt, nothing in this section shall 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.

[1/2005]

### **Control of substantial shareholding in approved holding companies**

**81ZE.**—(1) No person shall enter into any agreement to acquire shares in an approved holding company by virtue of which he 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.

[1/2005]

(2) No person shall become —

(a) a 12% controller; or

(b) a 20% controller,

of an approved holding company without first obtaining the approval of the Authority.

[1/2005]

(3) In subsection (2) —

“12% controller” means a person, not being a 20% controller, who alone or together with his 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 his 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.

[1/2005]

(4) In this section —

(a) a person holds a share if —

(i) he is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act (Cap. 50); or

(ii) he 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;

(b) a reference to the control of a percentage of the votes in an approved holding company shall 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, step-son or step-daughter or a brother or sister of *B*;

(ii) *A* is a corporation 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*, or where *B* is a corporation, of the directors of *B*;

(iii) *B* is a corporation 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 *A*, or where *A* is a corporation, of the directors of *A*;

- (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) *B* 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 *A*;
- (vi) *A* is a related corporation of *B*;
- (vii) *A* is a corporation in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *A*;
- (viii) *B* is a corporation in which *A*, alone or together with other associates of *A* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in *B*; or
- (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.

[1/2005]

(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.

[1/2005]

(6) Without prejudice to 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 notice in writing, 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.

[1/2005]

(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 notwithstanding any thing to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association or other constituent document or documents of the approved holding company —

- (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the approved holding company shall 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 shall 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.

[1/2005]

(8) Any issue of shares by an approved holding company in contravention of subsection (7)(b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (6) shall immediately return those shares to the approved holding company, upon which the approved holding company shall return to the person any payment received from him in respect of those shares.

[1/2005]

(9) Any payment made by an approved holding company in contravention of subsection (7)(c) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (6) shall immediately return the payment he has received to the approved holding company.

[1/2005]



(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 may be imposed by the Authority.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

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

**81ZF.**—(1) An approved holding company shall ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

[1/2005]

(2) No approved holding company shall appoint a person as its chairman, chief executive officer or director unless the approved holding company has obtained the approval of the Authority.

[1/2005]

(3) The Authority may, by notice in writing, 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 shall comply with the notice.

[1/2005]

(4) An application for approval under subsection (2) or (3) shall be made in such form and manner as the Authority may prescribe.

[1/2005]

(5) Without prejudice to the generality of 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 notice in writing.

[1/2005]

(6) Subject to subsection (7), the Authority shall not refuse an application for approval under this section without giving the approved holding company an opportunity to be heard.

[1/2005]

(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 he had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

(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.

[1/2005]

(9) An approved holding company shall, as soon as practicable, give written notice to the Authority of the resignation or removal of

its chairman, chief executive officer, director or person referred to in the notice issued by the Authority under subsection (3).

[1/2005]

(10) Without prejudice to the generality of section 81ZK, the Authority may make regulations relating to the composition and duties of the board of directors or any committee of an approved holding company.

[1/2005]

(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 a designated clearing house of which an approved holding company is the holding company.

[1/2005]

(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 may be imposed by the Authority.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

### **Listing of approved holding companies on securities market**

**81ZG.**—(1) The securities of an approved holding company shall not be listed for quotation on a securities market that is operated by any of its related corporations unless the approved holding company and the operator of the securities 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 trading of the securities of the approved holding company.

[1/2005]

(2) Where the securities of an approved holding company are listed for quotation on a securities market operated by any of its related corporations, the listing rules of the securities market shall be deemed to allow the Authority to act in place of the operator of the securities market in making decisions and taking action, or to require the operator of the securities market to make decisions and to take action on behalf of the Authority, on —

- (a) the admission to, or removal of, the approved holding company from the official list of the securities market; and
- (b) granting, stopping or suspending the securities of the approved holding company from being listed for quotation or quoted on the securities market.

[1/2005]

(3) The Authority may, by notice in writing to the operator of the securities market —

- (a) modify the listing rules of the securities market for the purpose of their application to the listing for quotation or trading of the securities of the approved holding company; or
- (b) waive the application of any listing rule of the securities market to the approved holding company.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

### **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 duties, becomes aware of —

- (a) any matter which, in his 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 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 shall immediately send to the Authority a written report of the matter or the irregularity.

[1/2005]

(2) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).

[1/2005]

(3) Subsection (2) shall 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.

[1/2005]

(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 audit as the Authority considers necessary;
- (b) a duty to enlarge, extend or alter the scope of his 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 audit, examination or establishment of procedure referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

[1/2005]

(5) The approved holding company shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).

[1/2005]

### **Power of Authority to exempt approved holding companies from provisions of this Part**

**81ZI.** The Authority may exempt an approved holding company or a class of approved holding companies from any of the provisions of this Part, if it is satisfied that the non-compliance by such approved holding company or class of approved holding companies with such provision would not detract from the objectives specified in section 81T, subject to such conditions or restrictions as may be imposed by the Authority.

[1/2005]

### **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 office or employment;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him 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 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 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 notice in writing direct that approved holding company to remove the officer from his office or employment and that approved holding company shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

[1/2005]

(2) Without prejudice to 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 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 notice in writing.

[1/2005]

(3) Subject to subsection (4), the Authority shall not direct an approved holding company to remove an officer from his office or employment without giving the approved holding company an opportunity to be heard.

[1/2005]

(4) The Authority may direct an approved holding company to remove an officer from his 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 had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

[1/2005]

(5) Where the Authority directs an approved holding company to remove an officer from his office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

[1/2005]

(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 shall be final.

[1/2005]

(7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

[1/2005]

(8) The Minister may, when deciding an appeal under subsection (6), make such modification as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the decision of the Minister.

[1/2005]

(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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

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

**81ZK.**—(1) Without prejudice to section 341, the Authority may make regulations relating to the approval of, and the requirements



applicable to, persons who establish, operate, or assist in establishing or operating approved holding companies.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

### **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;
- (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 may be imposed by the Authority 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 may be prescribed by the Authority,

issue directions by notice in writing either of a general or specific nature to an approved holding company, and the approved holding company shall comply with such directions.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(3) For the avoidance of doubt, a direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

[1/2005]

## PART IV

### HOLDERS OF CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVES

#### *Division 1 — Capital Markets Services Licence*

#### **Need for capital markets services licence**

**82.**—(1) Subject to subsection (2) and section 99, no person shall, whether as principal or agent, carry on business in any regulated activity or hold himself out as carrying on such business unless he is the holder of a capital markets services licence for that regulated activity.

(2) Subsection (1) shall 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 thereof during which the offence continues after conviction.

**83.** [*Deleted by Act 2/2009 wef 26/11/2010*]

### **Application for grant of capital markets services licence**

**84.**—(1) An application for the grant of a capital markets services licence shall be made to the Authority in such form and manner as the Authority may prescribe.

*[2/2009 wef 26/11/2010]*

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

*[1/2005]*

(3) An application for the grant of a capital markets services licence shall be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.

*[2/2009 wef 26/11/2010]*

### **Licence fee**

**85.**—(1) The holder of a capital markets services licence shall 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 wef 26/11/2010]*

(2) Any licence fee paid to the Authority in respect of any regulated activity shall 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 2/2009 wef 26/11/2010]*

(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

*[2/2009 wef 26/11/2010]*

(d) a prohibition order has been made against the holder of a capital markets services licence under section 101A.

*[2/2009 wef 26/11/2010]*

(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 thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.

[2/2009 wef 26/11/2010]

### **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 shall 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 shall 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 a securities exchange, futures exchange or recognised market operator.

[1/2005]

(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 furnished 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 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;  
*[2/2009 wef 26/11/2010]*
- (n) the Authority is of the opinion that it would be contrary to the interests of the public to grant the licence; or  
*[2/2009 wef 26/11/2010]*  
*[16/2003; 1/2005]*
- (o) a prohibition order under section 101A has been made by the Authority, and remains in force, against the applicant.  
*[2/2009 wef 26/11/2010]*
- (5) Subject to subsection (6), the Authority shall not refuse an application for a grant of a capital markets services licence without giving the applicant an opportunity to be heard.  
*[2/2009 wef 26/11/2010]*  
*[1/2005]*
- (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;

[2/2009 wef 26/11/2010]

[16/2003]

- (d) a prohibition order under section 101A has been made by the Authority, and remains in force, against the applicant.

[2/2009 wef 26/11/2010]

**87.** [Deleted by Act 2/2009 wef 26/11/2010]

**87A.** [Deleted by Act 2/2009 wef 26/11/2010]

### **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 wef 26/11/2010]

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

[2/2009 wef 26/11/2010]

(3) Any person who contravenes any condition or restriction in its licence shall be guilty of an offence.

[2/2009 wef 26/11/2010]

**89.** [Deleted by Act 2/2009 wef 26/11/2010]

### **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 wef 26/11/2010]

(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.

[16/2003]

(2) An application under subsection (1) shall be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.

*[2/2009 wef 26/11/2010]*

(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 wef 26/11/2010]*

*[16/2003]*

(4) The Authority shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

*[16/2003]*

### **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 in cash or in such other form as the Authority may prescribe in respect of that licence.

*[2/2009 wef 26/11/2010]*

(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 wef 26/11/2010]

[1/2005]

### **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 shall, not later than 14 days after the occurrence of the event, furnish particulars of the event to the Authority in the prescribed form and manner.

[2/2009 wef 26/11/2010]

(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 shall return the licence to the Authority within 14 days of the date of the cessation.

[2/2009 wef 26/11/2010]

[16/2003]

### **Records of holders of capital markets services licence**

**94.**—(1) The Authority shall 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 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; and

(e) such other information as may be prescribed.

(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 wef 26/11/2010]

### **Lapsing, revocation and suspension of capital markets services licence**

**95.—**(1) A capital markets services licence shall lapse —

- (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) 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;
- (c) the Authority has reason to believe that the holder, or any of its officers or employees, has not performed its or his 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;
- (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;
- (f) the holder has furnished 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.
- (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.
- (4) Subject to subsection (5), the Authority shall 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.
- (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; or
  - (d) a prohibition order under section 101A has been made by the Authority, and remains in force, against the holder.
- (6) Where the Authority has revoked or suspended a capital markets services licence, the holder of that licence shall —
- (a) in the case of a revocation of its licence, immediately inform all its representatives by notice in writing of such revocation, and the representatives who are so informed shall 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 notice in writing of such

suspension, and the representatives who are so informed shall cease to act as representatives of that holder during the period of the suspension.

- (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 thereof during which the offence continues after conviction.

(8) A lapsing, revocation or suspension of a capital markets services licence shall 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 wef 26/11/2010]*

### **Approval of chief executive officer and director of holder of capital markets services licence**

**96.—**(1) Subject to subsection (1B), no holder of a capital markets services licence shall —

- (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 wef 26/11/2010]*

(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 wef 26/11/2010]

[16/2003]

(1B) Subsection (1) shall 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 wef 26/11/2010]

(2) Without prejudice to 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 shall 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;

[2/2009 wef 26/11/2010]

- (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 he had acted fraudulently or dishonestly; and
- (ii) punishable with imprisonment for a term of 3 months or more.

[16/2003]

(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 prejudice to the Authority's power to impose conditions or restrictions under section 88, the Authority may, at any time by notice in writing 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 wef 26/11/2010]

(7) Any person who contravenes any condition imposed under subsection (6) shall be guilty of an offence.

[2/2009 wef 26/11/2010]

### **Removal of officer of holder of capital markets services licence**

**97.**—(1) Where the Authority is satisfied that an officer of a holder of a capital markets services licence —

- (a) has wilfully contravened or wilfully caused that holder to contravene this Act;
- (b) has without reasonable excuse failed to enforce compliance with this Act;
- (c) has failed to discharge the duties or functions of his office;
- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
- (e) has had execution against him 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 creditors,

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

*[2/2009 wef 26/11/2010]*

(fa) has had a prohibition order under section 101A made by the Authority against him that remains in force;

*[2/2009 wef 26/11/2010]*

(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 had acted fraudulently or dishonestly; or

*[2/2009 wef 26/11/2010]*

(h) is not a fit and proper person for such office,

*[2/2009 wef 26/11/2010]*

the Authority may, if it thinks it necessary in the interest of the public, or section of the public or for the protection of investors direct by notice in writing that holder to remove the officer from office or employment, and that holder shall comply with such notice notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

*[1/2005]*

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of a holder of a capital markets services licence has failed to discharge the duties or functions of his office for the purposes of subsection (1)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not direct a holder of a capital markets services licence to remove from office or employment an officer under this section without giving that holder an opportunity to be heard.

*[1/2005]*

(4) The Authority may direct a holder of a capital markets services licence to remove an officer from its office or employment under subsection (1) on any of the following grounds without giving the holder an opportunity to be heard:

(a) the officer 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 officer;  
*[2/2009 wef 26/11/2010]*
- (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 had acted fraudulently or dishonestly; and
  - (ii) punishable with imprisonment for a term of 3 months or more.

*[16/2003]*

(5) Where the Authority directs a holder of a capital markets services licence to remove from office or employment an officer under subsection (1), the Authority need not give that officer an opportunity to be heard.

(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 or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

### **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) No person shall 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 he would, if the arrangement is carried out, obtain effective control of the holder, unless he has obtained the prior approval of the Authority to his entering into the arrangement.



(3) An application for the Authority's approval under subsection (2) shall 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.

(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 his disposal or further acquisition of shares or voting power in the holder of a capital markets services licence; or
- (b) restricting his exercise of voting power in the holder of a capital markets services licence,

and the applicant shall comply with such conditions.

(5) Any condition imposed under subsection (4) shall have effect notwithstanding any provision of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the holder of a capital markets services licence.

(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 his shares to the first person;
  - (iii) the first person obtaining a right to acquire shares under an option, or to have shares transferred to himself or to his 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 shall be 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.

(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 wef 26/11/2010]*

### **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 the date of commencement of this section, 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 —

- (i) any condition of approval imposed on the person under section 97A(4) has not been complied with;
- (ii) 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;
- (iii) 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;
- (iv) the person does not or ceases to satisfy such criteria as may be prescribed;
- (v) the person has furnished false or misleading information or documents in connection with an application under section 97A; or
- (vi) 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) The Authority shall 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.

(3) The Authority shall, in any written notice of objection, specify a reasonable period within which the person to be served the written notice of objection shall —

- (a) take such steps as are necessary to ensure that he 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.

(4) Any person served with a notice of objection under this section shall comply with the notice.

(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 wef 26/11/2010]*

## 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;

*[2/2009 wef 26/11/2010]*

*[2/2009 wef 26/11/2010]*

- (c) [*Deleted by Act 2/2009 wef 26/11/2010*]
- (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 shall be final.

(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 shall be 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 (Cap. 19) in respect of any regulated activity;
- (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) in respect of any regulated activity which it is approved to carry out under that Act;
- (c) any finance company licensed under the Finance Companies Act (Cap. 108) 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 society registered under the Insurance Act (Cap. 142) in respect of fund management for the purpose of carrying out insurance business;
- (e) [*Deleted by Act 1/2005*]
- (f) any securities exchange, futures exchange, recognised market operator or approved holding company in respect

of any regulated activity that is solely incidental to its operation of a securities market or futures market or to its performance as an approved holding company, as the case may be;

(g) any designated clearing house in respect of any regulated activity that is solely incidental to its operation of a clearing facility; and

(h) such other person or class of persons in respect of any regulated activity as may be exempted by the Authority.

*[16/2003; 1/2005]*

(2) *[Deleted by Act 1/2005]*

(3) *[Deleted by Act 1/2005]*

(4) The Authority may by regulations or by notice in writing 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, shall 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 thereof during which the offence continues after conviction.

*[1/2005]*

(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;

*[2/2009 wef 26/11/2010]*

(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.

(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 shall 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 shall be 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) shall 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 wef 26/11/2010]

[1/2005]

(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 shall not be refunded or remitted if —

- (a) in the case of the exempt person —
- (i) its exemption is withdrawn;  
[2/2009 wef 26/11/2010]
  - (ii) it fails or ceases to carry on business in that regulated activity; or  
[2/2009 wef 26/11/2010]
  - (iii) a prohibition order has been made against it under section 101A,  
[2/2009 wef 26/11/2010]
- 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;  
[2/2009 wef 26/11/2010]
  - (ia) a prohibition order has been made against him under section 101A; or  
[2/2009 wef 26/11/2010]
  - (ii) he fails or ceases to act as a representative in respect of that regulated activity,  
[2/2009 wef 26/11/2010]
- during the period to which the annual fee relates.  
[2/2009 wef 26/11/2010]  
[1/2005]  
[2/2009 wef 26/11/2010]
- (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.  
[1/2005]
- (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 thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.  
[2/2009 wef 26/11/2010]



*Division 2 — Representatives***Acting as representative**

**99B.**—(1) No person shall act as a representative in respect of any type of regulated activity or hold himself out as doing so, unless he 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 first-mentioned person are within the type and scope of, or are the same as, that carried out by the exempt person (in his capacity as an exempt person); and
  - (ii) the manner in which the first-mentioned person carries out that type of regulated activity is the same as the manner in which the exempt person (in his capacity as an exempt person) carries out that type of regulated activity.

(2) The Authority may exempt any person or class of persons from subsection (1), subject to such conditions or restrictions as may be imposed by the Authority.

(3) A principal shall 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 his capacity as an exempt person); 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 his capacity as an exempt person) carries out that type of regulated activity.

(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 thereof during which the offence continues after conviction.

(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 thereof during which the offence continues after conviction.

### **Records and public register of representatives**

**99C.**—(1) The Authority shall keep in such form as it thinks fit records of the following information of each appointed representative, provisional representative and temporary representative:

- (a) his name;
- (b) the name of his current principal and every past principal (if any);
- (c) the current and past types of regulated activities performed by him and the date of commencement and cessation (if any) of his performance of such activities;
- (d) where the business of the principal for which he 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 and published under section 322;
- (f) such other information as may be prescribed.

(2) The information referred to in subsection (1) need only be kept for such period of time as the Authority considers appropriate.

(3) The Authority may reproduce the records referred to in subsection (1) or any part of them in a public register of representatives which shall be published in such manner as it considers appropriate.

### **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 may be specified by the Authority 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 is appointed to carry on business in that type of regulated activity and does not indicate that he 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) For the purpose of subsection (1)(a), the Authority shall, by direction published in such manner as may be prescribed, specify the examination requirements for each type of regulated activity.

(3) The Authority may require the principal or individual to furnish 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, shall comply with such a request.

(4) An individual shall cease to be an appointed representative in respect of any type of regulated activity on the date —

- (a) he 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 principal ceases to carry on business in that type of regulated activity;
- (c) the licence of his principal is revoked or lapses or a prohibition order under section 101A is made against his 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.

(5) An individual shall not be treated as an appointed representative during the period in which the licence of his principal is suspended.

(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 becomes a representative of a new principal in respect of that type of regulated activity and subsection (1) is complied with.

(7) Subsections (4) and (5) shall 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.

(8) A principal shall, no later than the next business day after the day —

- (a) an individual ceases to be his representative; or
- (b) an individual who is his representative ceases to carry on business in any type of regulated activity which he is appointed to carry on business in,

furnish particulars of such cessation to the Authority, in the prescribed form and manner.

### **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 may be specified by the Authority 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 is appointed to carry on business in that type of regulated activity and does not indicate that he 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) An individual shall 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 name in the public register of representatives.

(3) A provisional representative in respect of any type of regulated activity shall immediately cease to be one —

- (a) upon the expiry of the period of time specified by the Authority under subsection (2);
- (b) if he fails to comply with any condition or restriction imposed on him under section 99N;
- (c) upon his 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.

(4) Section 99D(3) to (8) (other than subsection (4)(e) thereof) shall apply 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.

(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 principal shall inform the Authority of that fact in the prescribed form and manner and within the prescribed time.

### **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 may be specified by the Authority 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 is appointed to carry on business in that type of regulated activity and does not indicate that he 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) An individual shall 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 name in the public register of representatives.

(3) A temporary representative in respect of any type of regulated activity shall immediately cease to be one —

- (a) upon the expiry of the period of time specified by the Authority under subsection (2);
- (b) if he fails to comply with any condition or restriction imposed on him under section 99N; or
- (c) on the occurrence of such other circumstances as the Authority may prescribe.

(4) Section 99D(3) to (8) (other than subsection (4)(e) thereof) shall apply 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.

## **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) 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 thereof during which the offence continues after conviction.

### **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 shall 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; and
- (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) Subject to section 99M, the Authority shall, 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 is an appointed, provisional or temporary representative, the type of regulated activity which he may carry on business in, and such other particulars as the Authority considers appropriate.

(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.

(4) A principal who submits a certificate under subsection (1)(b) shall 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.

(5) Where a change occurs in any particulars of the appointed, provisional or temporary representative in any document required to be furnished to the Authority under subsection (1), the principal shall, no later than 14 days after the occurrence of such change, furnish particulars of such change to the Authority, in the prescribed form and manner.

### **Exemption**

**99I.**—(1) The Authority may exempt any person or class of persons from any of the requirements of sections 99D to 99H.

(2) Such exemption is subject to such conditions or restrictions as may be imposed by the Authority.

### **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 shall at any one time be a representative of more than one principal.

(2) Notwithstanding subsection (1), an appointed representative may be a representative of more than one principal if the principals are related corporations.

(3) The Authority may require an applicant for approval under subsection (1) to furnish it with such information or documents as the Authority considers necessary in relation to the application.

(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 thereof during which the offence continues after conviction.

**Lodgment and fees**

**99K.**—(1) An individual shall, by the prescribed time, pay to the Authority such fee as may be prescribed by the Authority for the lodgment of documents under section 99H by his principal in relation to his appointment as an appointed, provisional or temporary representative.

(2) An individual who is an appointed or provisional representative shall, by the prescribed time each year, pay such annual fee as may be prescribed by the Authority in relation to the retention of his name in the public register of representatives as an appointed or provisional representative.

(3) An individual who is a temporary representative shall, by the prescribed time, pay such fee as may be prescribed by the Authority in relation to the retention of his name in the public register of representatives as a temporary representative.

(4) A representative shall pay such fee as may be prescribed by the Authority for any resubmission of a form or change in the particulars of a form lodged with the Authority in relation to his appointment as an appointed, provisional or temporary representative.

(5) Unless otherwise prescribed by the Authority, any fee paid to the Authority under this section shall not be refunded.

(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 thereof that the payment is late and both fees shall be recoverable by the Authority as a judgment debt.

(7) The fees referred to in this section shall be paid in the manner specified by the Authority.

**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) The notification shall be lodged in such form and manner as may be prescribed and shall 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.

(3) Subject to section 99M, the Authority shall, 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.

(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 furnish it with such information or documents as the Authority considers necessary.

(5) A notification under subsection (1) shall be accompanied by a non-refundable prescribed fee which shall be paid in the manner specified by the Authority.

**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 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 is appointed to carry on business in as a representative;
- (b) he or his principal has not provided the Authority with such information or documents as the Authority may require;
- (c) he is an undischarged bankrupt, whether in Singapore or elsewhere;

- (d) execution against him in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) he has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) he —
  - (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 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 educational or other qualification or experience having regard to the nature of the duties he is to perform in relation to that type of regulated activity;
  - (ii) he or his principal fails to satisfy the Authority that he 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 record of past performance or expertise having regard to the nature of the duties which he is to perform in relation to that type of regulated activity;
  - (iv) the Authority has reason to believe that he 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 his principal fails to satisfy the Authority, pursuant to a requirement imposed by the Authority as a condition of licence, under section 99N or by regulations (as the case may be), that he 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 is appointed;
  - (ii) the Authority is not satisfied with —
    - (A) his educational or other qualification or experience (being qualification or experience not known to the Authority at the time his name and particulars are entered in the public register of representatives); or
    - (B) his record of past performance or expertise, having regard to the nature of his duties as an appointed, provisional or temporary representative; or
  - (iii) the Authority has reason to believe that he will not carry on business in the type of regulated activity for which he is appointed efficiently, honestly or fairly;
  - (i) the Authority has reason to believe that he may not be able to act in the best interests of the subscribers or customers of his principal, having regard to his reputation, character, financial integrity and reliability;
  - (j) the Authority is not satisfied as to his 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 for the purpose of his business;

- (l) the individual is in arrears of the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);
- (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 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 furnished by him or his principal to the Authority is false or misleading;
- (o) he has contravened any provision of this Act applicable to him, any condition or restriction imposed on him under this Act or any direction issued to him 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;
- (q) the licence of his 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 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 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 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 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 was previously so licensed, authorised or regulated in a foreign jurisdiction but the period between the date of his ceasing to be so licensed, authorised or regulated and the date of his 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) 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.



(3) An individual whose status as an appointed, provisional or temporary representative has been revoked shall be deemed not to be an appointed, provisional or temporary representative, as the case may be.

(4) Where the status of an individual as an appointed, provisional or temporary representative has been suspended, he shall be deemed not to be an appointed, provisional or temporary representative (as the case may be) during the period of suspension.

(5) Where the Authority has revoked the status of an individual as an appointed, provisional or temporary representative, the Authority shall —

(a) indicate against his name in the public register of representatives that fact, which indication shall remain in the register for such period as the Authority considers appropriate; or

(b) remove his name from the register.

(6) Where the Authority has suspended the status of an individual as an appointed, provisional or temporary representative, the Authority shall indicate against his name in the public register of representatives that fact and the period of the suspension.

(7) Where the Authority has extended or revoked a suspension of the status of an individual as an appointed, provisional or temporary representative, it shall indicate against his name in the public register of representatives the new expiry date of the suspension, or indicate that he is no longer suspended, as the case may be.

(8) The Authority shall 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 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 furnished by the principal to the Authority and —
  - (i) such information or document was furnished to the principal by the individual, the individual proves that he 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 furnished to the principal by the individual, the principal proves that he 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.

(9) Subject to subsection (10), the Authority shall not take any action under subsection (1) or (2)(a) or (b)(i) without giving the individual an opportunity to be heard.

(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 is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) he 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 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).

(11) Any revocation or suspension by the Authority shall 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.

### **Power of Authority to impose conditions or restrictions**

**99N.**—(1) The Authority may, by notice in writing to an appointed, provisional or temporary representative, impose such conditions or restrictions as it thinks fit on him.

(2) Without prejudice to the generality of 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 may or may not carry on business in.

(3) The Authority may, at any time by notice in writing to the appointed, provisional or temporary representative, vary any condition or restriction or impose such further condition or restriction as it may think fit.

(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 thereof during which the offence continues after conviction.

**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) Any individual who, in connection with the lodgment by his principal of any document under section 99H —

- (a) makes a statement to his 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 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.

(3) Any person who, when required to furnish 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.

(4) A person referred to in subsection (1), (2) or (3) shall not be guilty of an offence if he proves that he —

- (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.

### **Appeals**

**99P.** Any person who is aggrieved by —

- (a) the refusal of the Authority under section 99M(1) to enter his name and other particulars in the public register of representatives, or to enter an additional type of regulated activity for him in that register; or
- (b) the revocation or suspension of his status as an appointed, provisional or temporary representative under section 99M(1) or (2)(a),

may, within 30 days after he is notified of the decision of the Authority, appeal to the Minister whose decision shall be final.

### *Division 3 — General*

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

**100.**—(1) Without prejudice to 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 name or an additional type of regulated activity in the public register of representatives, and the revocation or suspension of his 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 wef 26/11/2010]*

- (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 thereof during which the offence continues after conviction.

[16/2003]

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

**101.**—(1) The Authority may, if it thinks it necessary or expedient in the public interest, 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 wef 26/11/2010]

- (2) Without prejudice to the generality of 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 his 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 shall comply with the direction.

[16/2003]

(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 thereof during which the offence continues after conviction.

(4) For the avoidance of doubt, a direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

### **Power of Authority to make prohibition orders**

**101A.**—(1) The Authority may, by notice in writing, 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;
- (d) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened any provision of 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 he acted fraudulently or dishonestly;
- (f) the person has an order for the payment of a civil penalty made against him by a court under Part XII 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(1)(h).

(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)(f), (g) or (h) 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;
- (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).

(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 him from doing.

(4) The Authority shall not make a prohibition order against a person without giving the person an opportunity to be heard.

(5) Any person who is aggrieved by the decision of the Authority to make a prohibition order against him may, within 30 days of the decision, appeal in writing to the Minister.

(6) Where the Authority makes a prohibition order against any person who is an appointed, provisional or temporary representative, it shall indicate against his name in the public register of representatives that fact, and the indication shall remain in the register for the duration of the order.

*[2/2009 wef 26/11/2010]*

### **Effect of prohibition orders**

**101B.**—(1) A person against whom a prohibition order is made shall comply with the prohibition order.

(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 shall not employ the first-mentioned person to carry out any regulated activity or use the first-mentioned person's service, to the extent that this is prohibited by the order.

(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.

(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.

(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 shall immediately inform all its representatives who perform the regulated activity, by notice in writing of such prohibition order, and the representatives who are so informed shall cease to perform such regulated activity during the period specified in the prohibition order.

(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 thereof during which the offence continues after conviction.

*[2/2009 wef 26/11/2010]*

### **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) 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.

(3) The Authority shall not vary a prohibition order made against a person under subsection (2)(a) without giving the person an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against him under subsection (2)(a) may, within 30 days of the decision, appeal in writing to the Minister.

*[2/2009 wef 26/11/2010]*

**Date and effect of prohibition orders**

**101D.**—(1) A prohibition order, or any variation or revocation of a prohibition order, shall take effect on the date specified in the order by the Authority.

(2) A prohibition order shall 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 wef 26/11/2010]*

**PART V****BOOKS, CUSTOMER ASSETS AND AUDIT***Division 1 — Books***Keeping of books and furnishing of returns**

**102.**—(1) A holder of a capital markets services licence shall —

- (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 shall be deemed to have been made by, or with the authority of, the holder.

(3) A holder of a capital markets services licence shall retain such books as may be required to be kept under this Act for a period of not less than 5 years.

*[2/2007 wef 01/03/2007]*

- (4) A holder of a capital markets services licence shall —
- (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 prejudice to 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 thereof during which the offence continues after conviction.

[1/2005]

### *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.

[16/2003]

#### **Handling of customer assets**

**104.—(1)** A holder of a capital markets services licence shall, to the extent that it receives money or other assets from or on account of a customer —

- (a) do so on the basis that the money or other assets shall 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.

[16/2003]

(2) The Authority may, without prejudice to 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) shall not be available for payment of the debts of the holder of a capital markets services licence; and
- (b) shall not be liable to be paid or taken in execution under an order or a process of any court.

[16/2003]

### **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 thereof 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 thereof during which the offence continues after conviction.

[1/2005]

### *Division 3 — Audit*

#### **Appointment of auditors**

**106.** A holder of a capital markets services licence shall appoint an auditor to audit its accounts and where, for any reason, the auditor ceases to act for such holder, the holder shall, as soon as practicable thereafter, appoint another auditor.

#### **Lodgment of annual accounts, etc.**

**107.—(1)** A holder of a capital markets services licence shall, 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 may think 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 thereof 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) Notwithstanding 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 shall comply with such direction.

### **Reports by auditor to Authority in certain cases**

**108.** Where, in the performance of his duties as an auditor for a holder of a capital markets services licence, an auditor becomes aware of —

(a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the holder to a material extent;

(b) any matter which, in his 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 shall immediately thereafter send —

(i) a report in writing of the matter or irregularity to the Authority; and

- (ii) where the holder is a member of a securities exchange or futures exchange, a copy of the report to the securities exchange or futures exchange, as the case may be.

### **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 prejudice to 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) shall, 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 a securities exchange, futures exchange or designated 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 considers necessary to assist him in carrying out the examination and audit; and
- (e) authorise in writing any person employed by him to do, in relation to the examination and audit, any act or thing that he could do as an auditor under this subsection, other than the examination of any person on oath or affirmation.

[1/2005]

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an auditor appointed under section 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, he did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Division shall lie on him.

### **Safeguarding of books**

**112.**—(1) A holder of a capital markets services licence shall 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, shall not disclose any information which may come to his knowledge or

possession in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

- (a) the Authority; 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 shall prevent a securities exchange, futures exchange or designated 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.

[1/2005]

### **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 audit as the Authority considers necessary;
- (b) a duty to enlarge or extend the scope of his 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 shall carry out such additional duty or duties.

(2) A holder of a capital markets services licence shall 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 part, be liable to any action for defamation at the suit of any person in respect of —

- (a) any statement made orally or in writing in the discharge of his duties 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) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

## PART VI

### CONDUCT OF BUSINESS

#### *Division 1 — General*

**117.** [*Repealed by Act 2/2009 wef 26/11/2010*]

**118.** [*Repealed by Act 2/2009 wef 26/11/2010*]

**119.** [*Repealed by Act 1/2005*]

**120.** [*Repealed by Act 2/2009 wef 26/11/2010*]

**121.** [*Repealed by Act 1/2005*]

**122.** [*Repealed by Act 2/2009 wef 26/11/2010*]

### 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 affecting the generality of subsection (1), regulations made under this section may —

- (a) specify requirements applicable to the holder of a capital markets services licence in relation to securities financing;

- (aa) specify requirements and restrictions relating to the granting of unsecured advance, unsecured loan or unsecured credit facility by the holder of a capital markets services licence;
- (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;
- [2/2009 wef 26/11/2010]*
- (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;
- [2/2009 wef 26/11/2010]*
- (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 from time to time 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 his identity and his 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 him to manage or guide such account;
- [2/2009 wef 26/11/2010]*
- (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;

*[2/2009 wef 26/11/2010]*

- (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, securities which the holder has subscribed for or purchased, or may be required to subscribe for or purchase, under an underwriting or sub-underwriting agreement;

*[2/2009 wef 26/11/2010]*
- (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 his own account in securities or futures contracts;
- (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

shall 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.

[1/2005]

(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, notwithstanding 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 thereof during which the offence continues after conviction.

[16/2003]

(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.

**124.** [Repealed by Act 2/2009 wef 26/11/2010]

*Division — Securities*

**125.** [Repealed by Act 2/2009 wef 26/11/2010]

*Division — Futures Contracts and  
Leveraged Foreign Exchange Trading*

**126.** [Repealed by Act 2/2009 wef 26/11/2010]

**127.** [Repealed by Act 2/2009 wef 26/11/2010]



128. [Repealed by Act 2/2009 wef 26/11/2010]

129. [Repealed by Act 2/2009 wef 26/11/2010]

## PART VII

### DISCLOSURE OF INTERESTS

#### *Division 1 — Disclosure of Interest in Corporation*

#### **Application and interpretation of this Division**

**130.**—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(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 a securities 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 a securities exchange, such listing being a primary listing.

(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 shall be 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.

(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 (Cap. 50); and
- (b) in relation to a corporation (other than a company), means any person equivalent to a member of a company.

(5) Section 4 (other than subsection (6)) shall apply for the purpose of determining whether a person has an interest in securities under this Division; and in determining whether a person is deemed to have

an interest in securities under section 4(5) for such purpose, a person shall be treated as an associate of another person if the first-mentioned person is —

- (a) a subsidiary of the second-mentioned 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 the second-mentioned person in relation to those securities; or
- (c) a corporation which is, or 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 the second-mentioned person in relation to those securities.

(6) For the purposes of sections 133(3)(b)(i), 135(2)(b), 136(1), 137(1) and 137E(6), a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time —

- (a) of which he would, if he had acted with reasonable diligence in the conduct of his 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 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 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 had acted with reasonable diligence in the conduct of its affairs, have been aware at that time.

(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 wef 19/11/2012]

### **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) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

(4) The Authority may by notice in writing 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 shall comply with such conditions or restrictions.

(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 thereof during which the offence continues after conviction.

(6) The Authority may, on the application of a person required to give a notice under this Division, in its discretion, extend, or further extend, the time for giving the notice.

[2/2009 wef 19/11/2012]

### **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, class of persons, securities, interests in securities, or class of securities or interests in securities, other than the persons, securities or interests in securities to which this Division applies;
- (b) to require the disclosure of interests in any entity, arrangement or trust other than a corporation,

and the provisions of this Division shall apply accordingly.

[2/2009 wef 19/11/2012]

#### *Subdivision (1) — Disclosure by directors and chief executive officer of corporation*

### **Duty of director or chief executive officer to notify corporation of his interests**

**133.—(1)** Every director and chief executive officer of a corporation shall give notice in writing to the corporation of particulars of —

- (a) shares in —
  - (i) the corporation; or
  - (ii) a related corporation of the corporation, which he holds, or in which he 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 holds, or in which he has an interest and the nature and extent of that interest;
- (c) his rights or options, or rights or options of his 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 is a party, or under which he 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 holds, or in which he has an interest and the nature and extent of that interest;
- (f) such other securities as the Authority may prescribe, which are held, whether directly or indirectly, by him, or in which he 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) 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) shall only apply to a director of a corporation which is a company.

(3) A notice under subsection (1) —

- (a) shall be in such form and shall contain such information as the Authority may prescribe; and

(b) shall 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 or other securities referred to in subsection (1),

whichever last occurs.

(4) For the purposes of this section —

- (a) a director or chief executive officer of a corporation shall be deemed to have an interest in securities referred to in subsection (1) if a family member of the director or chief executive officer (not being himself a director or chief executive officer of the corporation), as the case may be, holds or has an interest in those securities; 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 a director or chief executive officer of the corporation) shall be deemed to have been entered into by, made or exercised by or made to the director or chief executive officer.

(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 or other securities referred to in subsection (1), or

an interest in shares, debentures, participatory interests or other securities 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 or securities, or the interest in shares, debentures, participatory interests or securities.

(6) In this section, “family member” means a spouse, or a son, adopted son, step-son, daughter, adopted daughter or step-daughter below the age of 21 years.

[2/2009 wef 19/11/2012]

### 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), furnishes any information which he 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 thereof during which the offence continues after conviction.

- (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, furnishes 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 thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]*

*Subdivision (2) — Disclosure by substantial shareholders  
in corporation*

**Duty of substantial shareholder to notify corporation of his interests**

**135.**—(1) A person who is or (if he has ceased to be one) had been a substantial shareholder in a corporation shall give notice in writing to the corporation of particulars of the voting shares in the corporation in which he has or had an interest or interests and the nature and extent of that interest or those interests.

- (2) A notice under subsection (1) —
- (a) shall be in such form and shall contain such information as the Authority may prescribe;



- (b) shall be given within 2 business days after the person becomes aware that he is or (if he has ceased to be one) had been a substantial shareholder; and
- (c) shall be given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in paragraph (b).

[2/2009 wef 19/11/2012]

### **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 shall give notice in writing to the corporation within 2 business days after he becomes aware of the change.

(2) A notice under subsection (1) shall be in such form and shall contain such information as the Authority may prescribe.

(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 wef 19/11/2012]

### **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 shall give notice in writing to the corporation within 2

business days after he becomes aware that he has ceased to be a substantial shareholder.

(2) A notice under subsection (1) shall be in such form and shall contain such information as the Authority may prescribe.

*[2/2009 wef 19/11/2012]*

**Beneficial owner to ensure notification by person who holds, acquires or disposes of interests on his behalf**

**137A.** Where a person authorises another person to hold, acquire or dispose of, on his behalf, voting shares or an interest or interests in voting shares in a corporation, he shall take reasonable steps to ensure that the second-mentioned person notifies him 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 the second-mentioned person on his behalf which will or may give rise to any duty on the part of the first-mentioned person to give notice under this Subdivision.

*[2/2009 wef 19/11/2012]*

**Notification by person who holds, acquires or disposes of interests for benefit of another person**

**137B.** Where a person holds voting shares in a corporation, being voting shares in which another person has an interest, he shall give to the second-mentioned person a notice of any acquisition or disposal of any of those shares effected by him, 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 wef 19/11/2012]*

**Corporation to keep register of substantial shareholders**

**137C.—(1)** A corporation shall keep a register in which it shall 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) The corporation shall 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 shall 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.

(3) A person may request the corporation to furnish him 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 shall 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.

(4) The Authority may at any time in writing require the corporation to furnish it with a copy of the register or any part of the register and the corporation shall send the copy to the Authority within 7 days after the day on which the corporation received the requirement.

(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 thereof during which the offence continues after conviction.

(6) A corporation is not, by reason of anything done under this Subdivision —

(a) to be taken for any purpose of the Companies Act (Cap. 50) 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 wef 19/11/2012]*

### **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, furnishes any information which he 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 —

- (i) 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 thereof during which the offence continues after conviction; or
- (ii) 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 thereof during which the offence continues after conviction.

(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, furnishes 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 thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

- (b) he 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 wef 19/11/2012]

### **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 substantial shareholder from disposing of any interest in shares in the corporation in which he 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 130A of the Companies Act (Cap. 50)) 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) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

(3) An order made under this section directing the sale of any share may provide that the sale shall 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 shall not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the corporation.

(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.

(5) The court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The court shall not 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 substantial shareholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and
- (b) that in all the circumstances, the failure ought to be excused.

(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.

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Any person who contravenes an order made under this section that is applicable to him 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 thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

*[2/2009 wef 19/11/2012]*

### **Power of corporation to require disclosure of beneficial interest in its voting shares**

**137F.**—(1) Any corporation may by notice in writing require any member of the corporation within such reasonable time as is specified in the notice —

- (a) to inform it whether he holds any voting shares in the corporation as beneficial owner or as trustee; and
- (b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(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 notice in writing require that other person within such reasonable time as is specified in the notice —

- (a) to inform it whether he holds that interest as beneficial owner or as trustee; and

- (b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.
- (3) Any corporation may by notice in writing 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 him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.
- (4) The notice referred to in subsection (1), (2) or (3) shall contain such other information as may be prescribed by the Authority, and the delivery of such notice shall comply with such requirements as may be prescribed by the Authority.
- (5) Any person to whom a notice is issued under subsection (1), (2) or (3) shall comply with that notice.
- (6) Whenever a corporation receives information from a person pursuant to a requirement imposed on him under this section with respect to shares held by a member of the corporation, it shall be 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.
- (7) Section 137C shall apply 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).
- (8) Any person who —
- (a) intentionally or recklessly contravenes subsection (5); or
  - (b) in purported compliance with subsection (5), furnishes any information which he 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 —

- (i) 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 thereof during which the offence continues after conviction; or
- (ii) 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 thereof during which the offence continues after conviction.

(9) Any person who —

- (a) contravenes subsection (5); or
- (b) in purported compliance with subsection (5), furnishes 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 thereof during which the offence continues after conviction.

(10) A person shall not be guilty of an offence under subsection (8)(a) or (9)(a) if he 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.

(11) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or

- (b) he 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 wef 19/11/2012]

*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 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 him under section 135, 136 or 137,

the corporation shall announce or otherwise disseminate the information stated in the notice to the securities market operated by the securities 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) The corporation shall announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

(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 thereof during which the offence continues after conviction.

(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 thereof during which the offence continues after conviction.

(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),

shall —

- (i) if he 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
- (ii) if he had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

(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.

(7) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]

*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 shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(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 a securities exchange.

(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 a securities exchange, such listing being a primary listing.

(4) Section 4 (other than subsection (6)) shall apply for the purpose of determining whether a person has an interest in securities under this Division; and in determining whether a person is deemed to have an interest in securities under section 4(5) for such purpose, a person shall be treated as an associate of another person if the first-mentioned person is —

- (a) a subsidiary of the second-mentioned 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 the second-mentioned person in relation to those securities; or

- (c) a corporation which is, or 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 the second-mentioned person in relation to those securities.

(5) Section 130(6) and (7) shall apply 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 wef 19/11/2012]*

### **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) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

(4) The Authority may by notice in writing 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 shall comply with such conditions or restrictions.

(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 thereof during which the offence continues after conviction.

(6) The Authority may, on the application of a person required to give a notice under this Division, in its discretion, extend, or further extend, the time for giving the notice.

[2/2009 wef 19/11/2012]

*Subdivision (1) — Disclosure by substantial unitholders  
of business trust*

**Duty of substantial unitholder to notify trustee-manager of his interests**

**137J.**—(1) Sections 135 to 137B shall 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 shall comply with those provisions accordingly.

(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), furnishes any information which he 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 —

- (i) 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 thereof during which the offence continues after conviction; or
- (ii) 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 thereof during which the offence continues after conviction.

(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), furnishes 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 thereof during which the offence continues after conviction.

(4) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]*

**Trustee-manager to keep register of substantial unitholders**

**137K.**—(1) The trustee-manager of a registered business trust or recognised business trust shall keep a register in which it shall 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) The trustee-manager shall 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 shall 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.

(3) A person may request the trustee-manager to furnish him 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 shall 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.

(4) The Authority may at any time in writing require the trustee-manager to furnish it with a copy of the register or any part of the register and the trustee-manager shall send the copy to the Authority within 7 days after the day on which the trustee-manager received the requirement.

(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 thereof during which the offence continues after conviction.

*[2/2009 wef 19/11/2012]*



**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 substantial unitholder from disposing of any interest in units in the business trust of which he 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 130A of the Companies Act (Cap. 50)) 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) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.
- (3) An order made under this section directing the sale of any unit may provide that the sale shall 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 shall not be made to a person who is, or, as a result of the sale, would become a substantial unitholder of the business trust.
- (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.
- (5) The court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.
- (6) The court shall not 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 substantial unitholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and
  - (b) that in all the circumstances, the failure ought to be excused.
- (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.

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Any person who contravenes an order made under this section that is applicable to him 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 thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

*[2/2009 wef 19/11/2012]*

### **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 notice in writing require any unitholder of the business trust within such reasonable time as is specified in the notice —

- (a) to inform it whether he holds any voting units in the business trust as beneficial owner or as trustee; and
- (b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(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 notice in writing require that other person within such reasonable time as is specified in the notice —

- (a) to inform it whether he holds that interest as beneficial owner or as trustee; and

- (b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.
- (3) The trustee-manager of a registered business trust or recognised business trust may by notice in writing 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 him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.
- (4) The notice referred to in subsection (1), (2) or (3) shall contain such other information as may be prescribed by the Authority, and the delivery of such notice shall comply with such requirements as may be prescribed by the Authority.
- (5) Any person to whom a notice is issued under subsection (1), (2) or (3) shall comply with that notice.
- (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 him under this section with respect to units held by a unitholder of the business trust, it shall be 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.
- (7) Section 137K shall apply 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).
- (8) Any person who —
- (a) intentionally or recklessly contravenes subsection (5); or

- (b) in purported compliance with subsection (5), furnishes any information which he 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 —

- (i) 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 thereof during which the offence continues after conviction; or
- (ii) 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 thereof during which the offence continues after conviction.

(9) Any person who —

- (a) contravenes subsection (5); or
- (b) in purported compliance with subsection (5), furnishes 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 thereof during which the offence continues after conviction.

(10) A person shall not be guilty of an offence under subsection (8)(a) or (9)(a) if he 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.

(11) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]

*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 his interests**

**137N.**—(1) Every director and chief executive officer of the trustee-manager of a registered business trust or recognised business trust shall give notice in writing 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 in which he 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 in which he has an interest and the nature and extent of that interest;
  - (c) such other securities as the Authority may prescribe which are held, whether directly or indirectly, by him, or in which he 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) A notice under subsection (1) —
- (a) shall be in such form and shall contain such information as the Authority may prescribe; and

(b) shall 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 or other securities referred to in subsection (1),

whichever last occurs.

(3) For the purposes of this section, a director or chief executive officer of a trustee-manager shall be deemed to have an interest in securities referred to in subsection (1) if a family member of the director or chief executive officer (not being himself a director or chief executive officer of the trustee-manager), as the case may be, has an interest in those securities.

(4) In this section —

“family member” means a spouse, or a son, adopted son, step-son, daughter, adopted daughter or step-daughter 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 wef 19/11/2012]

### **Penalties under this Subdivision**

**1370.**—(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, furnishes any information which he 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 thereof during which the offence continues after conviction.

(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, furnishes 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 thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]*



*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%, he shall give notice in writing to the trustee-manager within 2 business days after he becomes aware of this.

(2) A notice under subsection (1) shall be in such form and shall contain such information as the Authority may prescribe.

(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 he 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 wef 19/11/2012]*

**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, furnishes any information which he 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 —

- (i) 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 thereof during which the offence continues after conviction; or
- (ii) 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 thereof during which the offence continues after conviction.

(2) Any person who —

- (a) contravenes section 137P(1) or (2); or
- (b) in purported compliance with section 137P, furnishes 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 thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]*

*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; or
- (b) has been notified in writing by —
  - (i) a substantial unitholder of the business trust pursuant to a requirement imposed on him 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 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 him under section 137P,

the trustee-manager shall 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 securities market operated by the securities 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) The trustee-manager shall announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

(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 he 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 thereof during which the offence continues after conviction.

(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 thereof during which the offence continues after conviction.

(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 —

- (i) if he 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

- (ii) if he had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

(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.

(7) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]*

*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 shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

(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 a securities 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).

(3) Section 4 (other than subsection (6)) shall apply for the purpose of determining whether a person has an interest in securities under this Division; and in determining whether a person is deemed to have an interest in securities under section 4(5) for such purpose, a person shall be treated as an associate of another person if the first-mentioned person is —

- (a) a subsidiary of the second-mentioned 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 the second-mentioned person in relation to those securities; or
- (c) a corporation which is, or 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 the second-mentioned person in relation to those securities.

(4) Section 130(6) and (7) shall apply 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 wef 19/11/2012]

**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) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Authority may exempt any person or class of persons from any or all of the provisions of this Division.

(4) The Authority may by notice in writing 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 shall comply with such conditions or restrictions.

(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 thereof during which the offence continues after conviction.

(6) The Authority may, on the application of a person required to give a notice under this Division, in its discretion, extend, or further extend, the time for giving the notice.

[2/2009 wef 19/11/2012]

*Subdivision (1) — Disclosure by substantial unitholders of real estate investment trust*

**Duty of substantial unitholder to notify trustee and responsible person of his interests**

**137U.**—(1) Sections 135 to 137B shall 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 shall comply with those provisions accordingly.

(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), furnishes any information which he 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 —

- (i) 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 thereof during which the offence continues after conviction; or
- (ii) 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 thereof during which the offence continues after conviction.



- (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), furnishes 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 thereof during which the offence continues after conviction.

(4) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]*

### **Trustee to keep register of substantial unitholders**

**137V.**—(1) The trustee of a real estate investment trust shall keep a register in which it shall 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) The trustee shall 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 shall 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.

(3) A person may request the trustee to furnish him 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 shall 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.

(4) The Authority may at any time in writing require the trustee to furnish it with a copy of the register or any part of the register and the trustee shall send the copy to the Authority within 7 days after the day on which the trustee received the requirement.

(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 thereof during which the offence continues after conviction.

*[2/2009 wef 19/11/2012]*

### **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 substantial unitholder from disposing of any interest in units in the real estate investment trust of which he 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 130A of the Companies Act (Cap. 50)) 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) Any order made under this section may include such ancillary or consequential provisions as the court thinks just.

(3) An order made under this section directing the sale of any unit may provide that the sale shall 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 shall 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.

(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.

(5) The court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The court shall not 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 substantial unitholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(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.

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Any person who contravenes an order made under this section that is applicable to him 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 thereof during which the offence continues after conviction.

(10) Subsection (9) does not affect the powers of the court in relation to the punishment of contempt of the court.

*[2/2009 wef 19/11/2012]*

**Power of trustee to require disclosure of beneficial interest in voting units**

**137X.**—(1) The trustee of a real estate investment trust may by notice in writing require any unitholder of the trust within such reasonable time as is specified in the notice —

- (a) to inform it whether he holds any voting units in the trust as beneficial owner or as trustee; and
- (b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(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 notice in writing require that other person within such reasonable time as is specified in the notice —

- (a) to inform it whether he holds that interest as beneficial owner or as trustee; and
- (b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

(3) The trustee of a real estate investment trust may by notice in writing 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 him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

(4) The notice referred to in subsection (1), (2) or (3) shall contain such other information as may be prescribed by the Authority, and the delivery of such notice shall comply with such requirements as may be prescribed by the Authority.

(5) Any person to whom a notice is issued under subsection (1), (2) or (3) shall comply with that notice.

(6) Whenever the trustee of a real estate investment trust receives information from a person pursuant to a requirement imposed on him under this section with respect to units held by a unitholder of the trust, it shall be 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.

(7) Section 137V shall apply 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).

(8) Any person who —

(a) intentionally or recklessly contravenes subsection (5); or

(b) in purported compliance with subsection (5), furnishes any information which he 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 —

(i) 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 thereof during which the offence continues after conviction; or

(ii) 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 thereof during which the offence continues after conviction.

(9) Any person who —

- (a) contravenes subsection (5); or
- (b) in purported compliance with subsection (5), furnishes 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 thereof during which the offence continues after conviction.

(10) A person shall not be guilty of an offence under subsection (8)(a) or (9)(a) if he 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.

(11) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]

*Subdivision (2) — Disclosure by directors and chief executive officer of responsible person*

**Duty of director and chief executive officer of responsible person to notify his interests**

**137Y.**—(1) Every director and chief executive officer of the responsible person for a real estate investment trust shall give notice in writing to the responsible person of particulars of —

- (a) units in the trust, being units held by him, or in which he 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 in which he has an interest and the nature and extent of that interest;
  - (c) such other securities, as the Authority may prescribe, which are held, whether directly or indirectly, by him, or in which he 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) A notice under subsection (1) —
- (a) shall be in such form and shall contain such information as the Authority may prescribe; and
  - (b) shall 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 or other securities referred to in subsection (1),
- whichever last occurs.
- (3) For the purposes of this section, a director or chief executive officer of a responsible person shall be deemed to have an interest in securities referred to in subsection (1) if a family member of the director or chief executive officer (not being himself a director or chief executive officer of the responsible person), as the case may be, has an interest in those securities.



(4) In this section —

“family member” means a spouse, or a son, adopted son, step-son, daughter, adopted daughter or step-daughter 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 wef 19/11/2012]

### 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, furnishes any information which he 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 thereof during which the offence continues after conviction.

(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, furnishes 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 thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]*

*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%, he shall give notice in writing to the responsible person within 2 business days after he becomes aware of this.

(2) A notice under subsection (1) shall be in such form and shall contain such information as the Authority may prescribe.

(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 he 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 wef 19/11/2012]*

**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, furnishes any information which he 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 —

- (i) 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 thereof during which the offence continues after conviction; or
- (ii) 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 thereof during which the offence continues after conviction.

(2) Any person who —

- (a) contravenes section 137ZA(1) or (2); or
- (b) in purported compliance with section 137ZA, furnishes 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 thereof during which the offence continues after conviction.

(3) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]

*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; or
- (b) has been notified in writing by —
  - (i) a substantial unitholder of the real estate investment trust pursuant to a requirement imposed on him 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 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 him under section 137ZA,

the responsible person shall 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 securities market operated by the securities 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) The responsible person shall announce or otherwise disseminate the information in such form and manner as the Authority may prescribe.

(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 he 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 thereof during which the offence continues after conviction.

(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 thereof during which the offence continues after conviction.

(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 —

- (i) if he 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
- (ii) if he had acted negligently, be guilty of an offence and be liable on conviction to a fine not exceeding \$25,000.

(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.

(7) No proceedings shall be instituted against a person for an offence under this section after —

- (a) a court has made an order against him for the payment of a civil penalty under section 137ZD in respect of the same contravention; or
- (b) he 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 wef 19/11/2012]

#### *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, furnished, announced or disseminated any information which he 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) 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.

(3) Notwithstanding 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.

(4) Nothing in this section shall 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).

(5) A civil penalty imposed under this section shall be payable to the Authority.

(6) If the person fails to pay the civil penalty imposed on him 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.

(7) Any defence that is available to a person who is prosecuted for an act under subsection (1)(a), (b) or (c), shall also be available to a person against whom an action is brought under this section for the same act.

[2/2009 wef 19/11/2012]

### **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 shall 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 him for that act, except where he has been acquitted because of the withdrawal of the charge against him.



(2) An action under section 137ZD against any person for an act referred to in subsection (1)(a), (b) or (c) of that section shall be stayed after criminal proceedings have been commenced against him 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 him in respect of that act has been withdrawn.

[2/2009 wef 19/11/2012]

### **Jurisdiction of District Court**

**137ZF.** A District Court shall have jurisdiction to hear and determine any action under section 137ZD regardless of the monetary amount.

[2/2009 wef 19/11/2012]

### **Rules of Court**

**137ZG.** Rules of Court (Cap. 322, R 5) 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 wef 19/11/2012]

## **PART VIII**

### **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 Ed.) shall continue in existence as if it had been established under this Act.

(2) The function of the Securities Industry Council shall, in addition to the functions conferred upon it under this Part, be to advise the Minister on all matters relating to the securities industry.

(3) The Securities Industry Council shall consist of such representatives of business, the Government and the Authority as the Minister may appoint and those representatives shall serve for such period or periods as the Minister may determine.

(4) The Securities Industry Council shall have 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) shall compel the production by an advocate and solicitor of a document containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document which is in his possession.

(6) An advocate and solicitor who refuses to produce the document referred to in subsection (5) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom or by or on behalf of whom the communication was made.

(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) shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224); and

(b) shall have, in case of any action or suit brought against him for any act done or omitted to be done in the execution of his 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 office.

(9) The Securities Industry Council shall in the exercise of its functions have regard to the interest 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 shall not be bound by the rules of evidence.

### **Take-over Code**

**139.**—(1) This section and section 140 shall 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 shall 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 shall, 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 (referred to in this Act as the Take-over Code).

(3) For the avoidance of doubt, the Take-over Code shall be deemed not to be subsidiary legislation.

(4) The Take-over Code shall apply to a take-over offer and to matters connected therewith, and all parties concerned in a take-over offer or a matter connected therewith shall comply with its provisions.

(5) The Take-over Code shall be 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 shall be 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 shall 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) shall 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 shall have 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 hereby 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 shall not give notice or publicly announce that he intends to make a take-over offer.

(2) A person shall not make a take-over offer or give notice or publicly announce that he intends to make a take-over offer if he has no reasonable or probable grounds for believing that he will be able to perform his 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 IX

## SUPERVISION AND INVESTIGATION

*Division 1 — Supervisory Powers**Subdivision (1) — Powers of Authority to require disclosure of information about securities and futures contracts***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 securities or futures contracts, etc.**

**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 securities or trade in futures contracts, or an exempt person carrying on business in any of those activities, to disclose to the Authority, in relation to any acquisition or disposal of securities or futures contracts —

- (a) the name of the person from or through whom or on whose behalf the securities or futures contracts were acquired; or
- (b) the name of the person to or through whom or on whose behalf the securities or futures contracts were disposed of,

and the nature of the instructions given to the holder or exempt person in respect of the acquisition or disposal.

(2) The Authority may require a person who has acquired, held or disposed of securities or futures contracts to disclose to the Authority whether he acquired, held or disposed of those securities or futures contracts, 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 first-mentioned person in respect of the acquisition, holding or disposal.

(3) The Authority may require a securities exchange or futures exchange to disclose to the Authority, in relation to an acquisition or

disposal of securities on the securities market of that securities exchange or futures contracts on the futures market of that futures exchange, the names of the members of that securities exchange or futures exchange who acted in the acquisition or disposal.

(4) The Authority may require a designated clearing house for a securities market or futures market to disclose to the Authority, in relation to any dealing in securities on that securities market or trading in futures contracts on that futures market, the names of the members of the designated clearing house who were concerned in any act or omission in relation to the dealing or trading.

[1/2005]

### **Exercise of certain powers in relation to securities**

**143.**—(1) This section shall apply where the Authority considers that —

- (a) it may be necessary to prohibit dealing in securities of, or made available by, a corporation under section 32;
- (aa) it may be necessary to give a direction or take any action under section 34 or 81 in relation to securities of, or made available by, a corporation;
- (b) a person may have contravened any of the provisions of Part XII in relation to securities of, or made available by, a corporation; or
- (c) a person may have contravened any of the provisions of Division 4 of Part IV of the Companies Act (Cap. 50) or Division 2 of Part VII in relation to securities in a corporation.

[42/2005]

(2) The Authority may require an officer of a corporation referred to in subsection (1) to disclose to the Authority any information of which he is aware and which may have affected any dealing that has taken place, or which may affect any dealing that may take place, in securities of, or made available by, the corporation.

(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 securities of, or made available by, a corporation referred to in subsection (1);
- (b) any advice given, or any report or analysis issued or published concerning such securities, by the holder of a capital markets services licence to deal in securities, 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 securities and who has dealt in or given advice or issued or published a report or an analysis concerning such securities;
- (d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is a person referred to in that paragraph; or
- (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 securities, being a book relating to dealings in such securities,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

### **Exercise of certain powers in relation to futures contracts**

**144.**—(1) This section shall apply where the Authority considers that —

- (a) it may be necessary to give a direction or take any action in relation to any trading in futures contracts under section 34;
- [2/2009 wef 29/07/2009]*
- (aa) it may be necessary to give a direction or take any action in relation to futures contracts under section 81; or
  - (b) a person may have contravened any of the provisions of Part XII in relation to futures contracts.

*[42/2005]*

(2) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

- (a) any trading in futures contracts;
- (b) any advice given, or any report or analysis issued or published concerning such futures contracts, by the holder of a capital markets services licence to trade in futures contracts, 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 trade in futures contracts and has traded in or given advice or issued or published a report or an analysis concerning such futures contracts;
- (d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons, at least one of whom is a person referred to in that paragraph; or
- (e) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to trade in futures contracts, being a book relating to trading in such futures contracts,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

### **Self-incrimination**

**145.**—(1) A person is not excused from disclosing information to the Authority, under a requirement made of him under section 142, 143 or 144, on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing information that he is required to disclose by a requirement made of him under section 142, 143 or 144, that the statement might tend to incriminate him, that statement —



- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under section 148; but
- (b) shall be admissible in evidence for civil proceedings under Part XII.

### **Savings for advocates and solicitors**

**146.**—(1) Nothing in this Subdivision shall compel the disclosure by an advocate and solicitor of information containing a privileged communication made by or to him in that capacity.

[16/2003]

(2) An advocate and solicitor who refuses to disclose the information referred to in subsection (1) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

### **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 he 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 shall not be 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 thereof 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 he 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, an exempt market operator, a person operating a clearing facility, a designated clearing house, an approved holding company, the holder of a capital markets services licence, an exempt person or a representative.

[2/2009 wef 26/11/2010]

[1/2005]

- (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, shall produce such books to the Authority and give such information and facilities as may be required by the Authority; and
  - (b) a person referred to in subsection (1) shall procure that any person who is in possession of such books produce the books to the Authority and give such information and facilities as may be required by the Authority.
- (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 shall be 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) shall 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 his knowledge and

belief any matter about the compilation of the books or to which the books relate.

(7) Any person who fails, without reasonable excuse, 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 shall, with the necessary modifications, apply in relation to the production of any book or disclosure of any information to the Authority under this section.

(9) Section 149 shall, with the necessary modifications, apply 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 thereof (referred to in this section as the report) has been produced by the Authority upon an inspection under section 150 in respect of any approved exchange, recognised market operator, exempt market operator, person operating a clearing facility, designated clearing house, approved holding company, holder of a capital markets services licence, exempt person or representative (referred to in this section as the inspected person) and is provided by the Authority to the inspected person, the report shall 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) 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.

(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 shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the inspected person.

(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.

(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 him 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 he proves that —

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he 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, he 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 wef 26/11/2010]

*Subdivision (3) — Inspection powers of foreign regulatory authority***Inspection by foreign regulatory authority**

**150B.**—(1) No 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; or
- (b) a person exempted under section 99(1)(a), (b), (c), (d) or (h) from the requirement to hold a capital markets services licence,

except a foreign regulatory authority with the prior written approval of the Authority and under conditions of secrecy.

(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 holder of the capital markets services licence or the person exempted under section 99(1)(a), (b), (c), (d) or (h), as the case may be;
- (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; and
- (e) such other matters as the Authority may consider relevant.

(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 shall or shall 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.

(4) The Authority may, in relation to an inspection by a foreign regulatory authority conducted or to be conducted under this section on the holder of a capital markets services licence or a person exempted under section 99(1)(a), (b), (c), (d) or (h), at any time, by notice in writing to the holder or person exempted, impose such conditions or restrictions on the holder or person exempted as it may think fit, and the holder or person exempted shall comply with such conditions or restrictions.

(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 (Cap. 186).

### **Confidentiality of inspection report by foreign regulatory authority**

**150C.**—(1) Where a written report or any part thereof (referred to in this section as the report) has been produced by a foreign regulatory authority upon an inspection under section 150B in respect of any holder of a capital markets services licence or person exempted under section 99(1)(a), (b), (c), (d) or (h) (referred to in this section as the inspected person) and is provided by the foreign regulatory authority to the inspected person, the report shall 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) 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.

(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 shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the inspected person.

(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.

(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 him 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 he proves that —

- (a) the disclosure was made contrary to his desire;
- (b) where the disclosure was made in any written form, he 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, he 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.

*Division 2 — Power of Minister to Appoint  
Inspector for Investigating Dealings  
in Securities, etc.*

**Power of Minister to appoint inspectors**

**151.**—(1) Notwithstanding anything in this Act, the Minister may, if he thinks it in the public interest to do so, appoint any person as an inspector to investigate any matter concerning dealing in securities, trading in futures contracts or leveraged foreign exchange trading.

(2) An inspector appointed under subsection (1) shall have all the powers conferred upon an inspector under Part IX of the Companies Act (Cap. 50) and that Part shall, with the necessary modifications, apply to such investigation.

(3) Any inspector appointed under subsection (1) shall report the results of his investigation to the Minister and the Minister may, if he 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; or

- (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) notwithstanding 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 shall have effect notwithstanding 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 shall not be 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 he 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 he 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 he 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).

### **Confidentiality of investigation reports**

**152A.**—(1) Where a written report or any part thereof (referred to in this section as 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 (referred to in this section as the investigated person), the report shall 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) 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.

(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 shall comply with such conditions or restrictions.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment by the investigated person.

(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.

(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 him 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 he proves that —

- (a) the disclosure was made contrary to his desire;
- (b) where the disclosure was made in any written form, he 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, he 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 wef 26/11/2010]*

### **Self-incrimination and savings 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), under a requirement made of him under any provision of this Division on the ground that the disclosure of the information might tend to incriminate him.

(2) Where a person claims, before making a statement disclosing information that he is required to under any provision of this Division to the Authority or, as the case may be, an investigator under Subdivision (2), that the statement might tend to incriminate him, that statement —

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 162(3); but

*[2/2009 wef 29/07/2009]*

- (b) shall, for the avoidance of doubt, be admissible in evidence in civil proceedings under Part XII.
- (3) Nothing in this Division shall —
- (a) compel an advocate and solicitor to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity; or
- (b) authorise the taking of any such document or other material which is in his possession.

[16/2003]

(4) An advocate and solicitor who refuses to disclose the information or produce the document or other material referred to in subsection (3) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

*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 requirement in writing imposed under subsection (1) shall state the general nature of the matter referred to in subsection (1).

**Proceedings at examination**

**155.** The provisions of this Subdivision shall apply where, pursuant to a requirement made under section 154 for the purposes of an investigation under this Division, a person (referred to in this Subdivision as the examinee) appears before another person (referred to in this Subdivision as 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 shall 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 shall not be present at the examination unless he 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 shall 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 him, and may require him to sign it; and
- (b) the investigator shall, 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, shall 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, shall 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 shall 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 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.

[1/2005]

- (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 him 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, furnishes 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 shall be a defence to a prosecution for an offence under subsection (3) if the defendant proves that he 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.

[1/2005]

*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 such person shall comply with that requirement.

**Application for warrant to seize books not produced**

**164.—(1)** Where the Authority has reasonable grounds to suspect that there is, on any particular premises, any book the production of which has been required under section 163, and —

- (a) which has not been produced in compliance with that requirement; or
- (b) which the Authority has reasonable grounds to believe will not be produced in compliance with that requirement,

the Authority may apply to a Magistrate for the issue of a warrant to search the premises for such book.

(2) Whenever it appears to a Magistrate, upon an application made under subsection (1), and after such enquiry as he may think necessary, that there are reasonable grounds for suspecting that there is, on particular premises, any book the production of which has been required under section 163, and —

- (a) which has not been produced in compliance with that requirement; or
- (b) which the Magistrate has reasonable grounds to suspect will not be produced in compliance with that requirement,

the Magistrate may issue a warrant authorising the Authority or any person named therein, with or without assistance —

- (i) to enter and search the premises and to break open and search anything, whether a fixture or not, in the premises; and
- (ii) to take possession of, or secure against interference, any book that appears to be a book the production of which was so required.

(3) The powers conferred under subsections (1) and (2) are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(4) In this section, “premises” includes any structure, building, aircraft, vehicle or vessel.

### **Powers where books are produced or seized**

**165.**—(1) This section shall apply where —

- (a) books are produced to the Authority under a requirement made under section 163;
- (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.

(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; 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 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 shall be 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) shall 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 first-mentioned person; and
- (b) may permit any other person to inspect any of the books.

(6) Unless subsection (1)(b)(ii) applies, 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.

(7) Where subsection (1)(a) or (b) applies, the Authority, 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 knowledge and belief any matter about the compilation of any of the books or to which any of the books relate.

### **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 his 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.

[1/2005]

### **Offences under this Part**

**168.—(1)** A person who, without reasonable excuse, refuses or fails to comply with any requirement imposed under section 163, 165(7) or 166 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.

[1/2005]

(2) A person who, in purported compliance with a requirement under this Subdivision, furnishes 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 shall be a defence to a prosecution for an offence under subsection (2) if the defendant proves that he 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 relating to a matter that the Authority is investigating or about to investigate under this Division or who, where such a book is within the territory of Singapore, takes or sends the book 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.

(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 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.

[1/2005]

(6) The occupier or the person in charge of the premises that a person enters under a warrant issued under section 164 who fails to provide to that person all reasonable facilities and assistance for the effective exercise of his powers under the warrant 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.

#### *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 (Cap. 235);

“police officer” means a member of the Singapore Police Force who is deployed in the Commercial Affairs Department of that Force.

**Evidence obtained by Authority may be used in criminal investigations and proceedings**

**168B.**—(1) Notwithstanding the provisions of any written law or any rule of law, the Authority may furnish 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 XII.

(2) For the avoidance of doubt, any book, document, written record of examination or other information furnished by the Authority under subsection (1) shall not be 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 shall be determined in accordance with the rules of evidence under written law and any relevant rules of law.

**Evidence obtained in police investigations may be used in civil proceedings**

**168C.**—(1) Notwithstanding 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 powers under Divisions 1 and 2 of Part IV and sections 111, 258, 260, 261 and 280 of the Criminal Procedure Code 2010 may be furnished 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 XII.

*[15/2010 wef 02/01/2011]*

(2) For the avoidance of doubt, any book, document, statement or other information furnished to the Authority under subsection (1) shall not be 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 powers under the Criminal Procedure Code, and the admissibility thereof shall be determined in accordance with the rules of evidence under written law and any relevant rules of law.

## PART X

### 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 or futures industry of 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 or futures industry of 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 a securities market or futures market, an intermediary or any other person regulated by the regulatory authority; or
- (b) the issuance of or trading in securities, or the trading in futures contracts in the foreign country of the regulatory authority.

### **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 6th 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 6th March 2000;
- (d) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall 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 may be imposed by the Authority;

- (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; and
- (i) the rendering of assistance will not be contrary to the public interest or the interest of the investing public.

(2) For the purposes of 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; and

- (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) Notwithstanding 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 furnish 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 furnish 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) shall have effect notwithstanding 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 shall compel an advocate and solicitor —

(a) to furnish or transmit any material or copy thereof that contains; or

(b) to disclose,

a privileged communication made by or to him in that capacity.

(5) An advocate and solicitor who refuses to furnish or transmit any material or copy thereof that contains, or to disclose, any privileged communication shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(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 him but, where the person claims before making the statement that the statement might tend to incriminate him, that statement —

(a) shall not be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 173; but

(b) shall be admissible in evidence in civil proceedings under Part XII.

### **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), furnishes 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) furnishing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if he had furnished 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 he 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) shall not be 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 XI

### 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 he holds any share in the share capital of such exchange; and  
*[2/2009 wef 29/07/2009]*
- (b) is licensed by the Authority to carry on the business of dealing in securities or trading in futures contracts, as the case may be.  
*[2/2009 wef 29/07/2009]*

### **Establishment of fidelity fund**

**176.**—(1) Each approved exchange shall establish, keep and administer a fidelity fund (referred to in this Part as a fidelity fund or fund).

*[2/2009 wef 29/07/2009]*

- (2) The assets of the fidelity fund of an approved exchange shall —
- (a) be the property of the exchange;
- (b) be kept separate from all other property of the exchange; and
- (c) be held in trust for the purposes set out in this Part.  
*[2/2009 wef 29/07/2009]*

### **Moneys constituting fidelity fund**

**177.** The fidelity fund of an approved exchange shall consist 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 wef 29/07/2009]*

**Fund to be kept in separate bank account**

**178.** All moneys forming part of a fidelity fund shall, 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 shall 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 wef 29/07/2009]

**Accounts of fund**

**180.—(1)** An approved exchange shall establish and keep proper accounts of its fidelity fund and shall, 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 wef 29/07/2009]

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

[2/2009 wef 29/07/2009]

(3) The auditor appointed by the approved exchange shall —

- (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 wef 29/07/2009]

### **Fidelity fund to consist of amount of \$20 million, etc.**

**181.** The fidelity fund of an approved exchange shall consist of an amount of not less than —

- (a) \$20 million; or
- (b) such other amount as the Authority may, by order published 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 wef 29/07/2009]

### **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 shall 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 wef 29/07/2009]

**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, shall impose a levy of such amount which shall in the aggregate be equivalent to the amount so specified in the order.

*[2/2009 wef 29/07/2009]*

(2) The amount of such levy shall 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 wef 29/07/2009]*

(3) No member of an approved exchange shall be required to pay by way of levy under this section more than \$300,000 in the aggregate in any particular case.

*[2/2009 wef 29/07/2009]*

**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 wef 29/07/2009]*

(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 wef 29/07/2009]*

**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 wef 29/07/2009]*



**Application of fund**

**186.**—(1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating any person (other than an accredited investor) who suffers pecuniary loss because of a defalcation committed —

- (a) in the course of, or in connection with, a dealing in securities, or the trading of a futures contract;
- (b) by a member of an approved exchange or by any agent of such member; and

*[2/2009 wef 29/07/2009]*

- (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) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to the Official Assignee or a trustee in bankruptcy within the meaning of the Bankruptcy Act (Cap. 20) 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 securities or trading in futures contracts that have been proved in the bankruptcy by creditors of the bankrupt member.

*[2/2009 wef 29/07/2009]*

(3) Subsection (2) shall apply in the case of a member of an approved exchange who has made a voluntary arrangement with his creditors under Part V of the Bankruptcy Act in like manner as that subsection applies in the case of a member who has become bankrupt.

*[2/2009 wef 29/07/2009]*

(4) For the purposes of subsection (3) —

- (a) a reference to a trustee in bankruptcy in subsection (2) shall be deemed to be a reference to a nominee within the meaning of Part V of the Bankruptcy Act;
- (b) a reference to debts proved in bankruptcy in subsection (2) shall be deemed to be a reference to debts provable in relation to a voluntary arrangement within the meaning of Part V of the Bankruptcy Act; and
- (c) a reference to the bankrupt in subsection (2) shall be deemed to be a reference to the person who made the voluntary arrangement under Part V of the Bankruptcy Act.

(5) Subject to this Part, the fidelity fund shall 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 securities or trading in futures contracts that have been proved in the liquidation of the member.

*[2/2009 wef 29/07/2009]*

(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) shall 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) shall 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) shall 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 securities or trading in futures contracts, and for no other purpose.

(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),

<sup>1</sup>shall 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),

<sup>2</sup>shall not exceed the prescribed amount.

(12) For the purposes of subsections (10) and (11), any amount paid out of the fidelity fund shall, to the extent to which the fund is subsequently reimbursed therefor, be 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

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<sup>1</sup>Prescribed amount shall be \$2 million for the purposes of section 186(10) — see G.N. No. S 367/2005.

<sup>2</sup>Prescribed amount shall be \$50,000 for the purposes of section 186(11) — see G.N. No. S 367/2005.

person to be a director, an officer, an employee or a representative of the member.

*[2/2009 wef 29/07/2009]*

(14) In this section, any reference to dealing in securities or trading of a futures contract is a reference to such dealing or trading 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 securities exchange or an overseas futures exchange.

### **Claims against fund**

**187.**—(1) Subject to this Part, every person who suffers pecuniary loss referred to in section 186 shall be entitled to claim compensation out of the fidelity fund and to take proceedings in the High Court under this Act against an approved exchange to establish such claim.

*[2/2009 wef 29/07/2009]*

(2) A person shall 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 wef 29/07/2009]*

(3) Subject to this Part, the amount which any claimant shall be entitled to claim as compensation out of a fidelity fund shall be the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of the loss.

### **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 wef 29/07/2009]*

(2) A claim for compensation out of a fidelity fund in respect of a defalcation shall 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 wef 29/07/2009]*

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

*[2/2009 wef 29/07/2009]*

(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 wef 29/07/2009]*

### **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 wef 29/07/2009]*

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

(a) the approved exchange has disallowed his claim; and

*[2/2009 wef 29/07/2009]*

(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 wef 29/07/2009]*

(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 of the High Court in chambers who may make such order in the matter as he thinks fit.

*[2/2009 wef 29/07/2009]*

(4) An approved exchange shall, after disallowing (whether wholly or in part) any claim for compensation out of a fidelity fund, serve notice of such disallowance in the prescribed form on the claimant or his solicitor.

*[2/2009 wef 29/07/2009]*

(5) No proceedings against an approved exchange in respect of a claim which has been disallowed by the exchange shall be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).

*[2/2009 wef 29/07/2009]*

(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, shall be admissible to prove the commission of the defalcation, notwithstanding that the member or other person is not the defendant in or a party to those proceedings; and

*[2/2009 wef 29/07/2009]*

(b) all defences which would have been available to that member or person shall be available to the approved exchange.

*[2/2009 wef 29/07/2009]*

(7) An approved exchange or, where proceedings are brought to establish a claim, the High Court, if satisfied that the defalcation on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the defalcation has not been convicted or prosecuted therefor or that the evidence on which the approved exchange or the

High Court, as the case may be, acts would not be sufficient to establish the guilt of that person upon a criminal trial in respect of the defalcation.

*[2/2009 wef 29/07/2009]*

### **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 wef 29/07/2009]*

(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 him under this Part.

*[2/2009 wef 29/07/2009]*

### **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 shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by him by reason of the defalcation on which the claim was based.

*[2/2009 wef 29/07/2009]*

### **Payment of claims only from fund**

**192.** No moneys or other property belonging to an approved exchange, other than the fidelity fund, shall be available for the payment of any claim under this Part, whether the claim is allowed by the approved exchange or is made the subject of an order of the High Court.

*[2/2009 wef 29/07/2009]*

**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 High Court have been made, then the amount at credit in the fund shall, subject to subsection (2), be apportioned between the claimants in such manner as the approved exchange thinks equitable, and such claim shall, 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 wef 29/07/2009]*

(2) Where the aggregate of all claims which have been allowed or in respect of which orders of the High Court have been made in relation to 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 shall be apportioned between the claimants in such manner as the approved exchange thinks equitable.

*[2/2009 wef 29/07/2009]*

(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 shall be absolutely discharged.

**Power of approved exchange to enter into contracts of insurance**

**194.**—(1) An approved exchange may in its discretion, 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 wef 29/07/2009]*

(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 wef 29/07/2009]

### **Application of insurance moneys**

**195.** No claimant against a fidelity fund shall have 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 have any right or claim with respect to any moneys paid by the insurer in accordance with any such contract.

## PART XII

### MARKET CONDUCT

#### *Division 1 — Prohibited Conduct — Securities*

### **Application of this Division**

**196.** This Division shall apply to —

- (a) acts occurring within Singapore in relation to —
  - (i) securities of any corporation, whether formed or carrying on business in Singapore or elsewhere;
  - (ia) securities of any business trust; or
  - (ii) securities listed for quotation or quoted on a securities market in Singapore or elsewhere; and
- (b) acts occurring outside Singapore, in relation to —
  - (i) securities of a corporation that is formed or carrying on business in Singapore;
  - (ia) securities of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore; or

- (ii) securities listed for quotation or quoted on a securities market in Singapore.

[1/2005]

### Interpretation of this Division

**196A.** In this Division —

“debenture” has the same meaning as in section 2 and, in relation to a business trust, means any debenture issued by the trustee of the business trust in its capacity as trustee of the business trust;

“securities” —

(a) in relation to a corporation, for the purposes of sections 196(a)(i) and (b)(i), 198, 202 and 203, means —

(i) debentures, stocks or shares issued or proposed to be issued by a corporation;

(ii) any right, option or derivative in respect of any such debentures, stocks or shares;

[2/2009 wef 20/04/2009]

(iii) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —

(A) the value or price of any such debentures, stocks or shares;

(B) the value or price of any group of any such debentures, stocks or shares; or

(C) an index of any such debentures, stocks or shares ; or

[2/2009 wef 20/04/2009]

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

but does not include —

- (AA) futures contracts;
- (BB) bills of exchange;
- (CC) promissory notes;

[2/2009 wef 20/04/2009]

(DD) certificates of deposit issued by a bank or finance company; or

(EE) such other product or class of products as the Authority may prescribe as not being securities;

(b) in relation to a business trust, for the purposes of sections 196(a)(ia) and (b)(ia), 198, 202 and 203, means —

- (i) units in a business trust;
- (ii) derivatives of units in a business trust;
- (iii) debentures of a business trust;

[2/2009 wef 20/04/2009]

(iv) any right, option or derivative in respect of any such debentures; or

[2/2009 wef 20/04/2009]

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

but does not include —

- (A) futures contracts;
- (B) bills of exchange;

[2/2009 wef 20/04/2009]

(C) promissory notes; or

(D) such other product or class of products as the Authority may prescribe as not being securities; and

(c) in any other case, has the same meaning as in section 2.

[1/2005]

**False trading and market rigging transactions**

**197.**—(1) No person shall create, or do anything that is intended or likely to create a false or misleading appearance —

- (a) of active trading in any securities on a securities market; or
- (b) with respect to the market for, or the price of, such securities.

(2) No person shall, by means of any purchase or sale of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

(3) Without prejudice to the generality of subsection (1), a person who —

- (a) effects, takes part in, is concerned in or carries out, directly or indirectly, any transaction of purchase or sale of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;
- (b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him 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 securities at a price that is substantially the same as the first-mentioned price; or
- (c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him 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 securities at a price that is substantially the same as the first-mentioned price,

shall be deemed to have created a false or misleading appearance of active trading in securities on a securities market.

(4) In any proceedings against a person for a contravention of subsection (1) because of an act referred to in subsection (3), it is a defence if the defendant establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities market.

(5) For the purposes of this section, a purchase or sale of securities does not involve a change in the beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In any proceedings against a person for a contravention of subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities 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, securities.

(7) The reference in subsection (3)(a) to a transaction of purchase or sale of securities includes —

- (a) a reference to the making of an offer to purchase or sell securities; 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 securities.

### **Securities market manipulation**

**198.**—(1) No person shall effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the corporation on a securities market, with intent to

induce other persons to subscribe for, purchase or sell securities of the corporation or of a related corporation.

(1A) No person shall effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities 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 of the business trust on a securities market, with intent to induce other persons to subscribe for, purchase or sell securities of the business trust.

[1/2005]

(2) A reference in subsection (1) or (1A) to transactions in securities of a corporation or securities of a business trust, as the case may be, includes —

- (a) a reference to the making of an offer to purchase or sell such securities of the corporation or such securities of the business trust, as the case may be; and
- (b) 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 of the corporation or such securities of the business trust, as the case may be.

[1/2005]

### **False or misleading statements, etc.**

**199.** No person shall 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;
- (b) to induce the sale or purchase of securities by other persons; or
- (c) to have the effect of raising, lowering, maintaining or stabilising the market price of securities,

if, when he makes the statement or disseminates the information —

- (i) he does not care whether the statement or information is true or false; or

- (ii) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

### **Fraudulently inducing persons to deal in securities**

**200.**—(1) No person shall —

- (a) by making or publishing any statement, promise or forecast that he 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 he knows to be false or misleading in a material particular,

induce or attempt to induce another person to deal in securities.

(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, he 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), the opinion of any registered or public accountant as to the financial position of any company at any time or during any period in respect of which he has made an audit or examination of the affairs of the company according to recognised audit practice shall be admissible, for any party to the proceedings, as evidence of the financial position of the company at that time or during that period, notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

**Employment of manipulative and deceptive devices**

**201.** No person shall, directly or indirectly, in connection with the subscription, purchase or sale of any securities —

- (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 he 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.

**Dissemination of information about illegal transactions**

**202.** No person shall circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation or any securities 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 securities of that corporation, or of a corporation that is related to that corporation, or securities of that business trust, as the case may be, which to his 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 if —

- (a) the person, or a person associated with the 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, or a person associated with the 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, the statement or information.

[1/2005]



**Continuous disclosure**

**203.**—(1) This section shall apply to —

- (a) an entity the securities of which are listed for quotation on a securities exchange;
- (b) a trustee of a business trust, where the securities of the business trust are listed for quotation on a securities exchange; or
- (c) a responsible person of a collective investment scheme, where the units of the collective investment scheme are listed for quotation on a securities exchange,

if the entity, trustee or responsible person is required by the securities exchange under the listing rules or any other requirement of the securities exchange to notify the securities exchange of information on specified events or matters as they occur or arise for the purpose of the securities exchange making that information available to a securities market operated by the securities exchange.

[1/2005]

(2) The persons specified in subsection (1)(a), (b) or (c) shall not intentionally, recklessly or negligently fail to notify the securities exchange of such information as is required to be disclosed by the securities exchange under the listing rules or any other requirement of the securities exchange.

[1/2005]

(3) Notwithstanding section 204, a contravention of subsection (2) shall not be an offence unless the failure to notify is intentional or reckless.

**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 him 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.

*Division 2 — Prohibited Conduct —  
Futures Contracts, Leveraged  
Foreign Exchange Trading*

### **Application of this Division**

**205.** This Division shall apply to —

- (a) acts occurring within Singapore, in relation to —
  - (i) futures contracts, whether traded on a futures market in Singapore or elsewhere; or
  - (ii) foreign exchange in connection with leveraged foreign exchange trading, whether in Singapore or elsewhere; and
- (b) acts occurring outside Singapore, in relation to —
  - (i) futures contracts traded on a futures market in Singapore;
  - (ii) foreign exchange in connection with leveraged foreign exchange trading in Singapore; or
  - (iii) foreign exchange in connection with leveraged foreign exchange trading that is accessible from Singapore.

### **False trading**

**206.** No person shall create, or do anything that is intended or likely to create, a false or misleading appearance of active trading in any futures contract on a futures market or in connection with leveraged foreign exchange trading, or a false or misleading appearance with respect to the market for, or the price of futures contracts on a futures

market or foreign exchange in connection with leveraged foreign exchange trading.

### **Bucketing**

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

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

### **Manipulation of price of futures contract and cornering**

**208.** No person shall, directly or indirectly —

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

### **Fraudulently inducing persons to trade in futures contracts**

**209.**—(1) No person shall —

- (a) by making or publishing any statement, promise or forecast that he knows or ought reasonably to have known to be false, misleading 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 false, misleading or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular,

induce or attempt to induce another person to trade in a futures contract or engage in leveraged foreign exchange trading.

(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, he had no reasonable grounds for expecting that the information would be available to any other person.

### **Employment of fraudulent or deceptive devices, etc.**

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

- (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 false statement of a material fact; 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.

### **Dissemination of information about illegal transactions**

**211.** No person shall circulate, disseminate, or authorise, or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of a class of futures contracts or foreign exchange in connection with leveraged foreign exchange trading will, or is likely to, rise or fall or be maintained because of the market operations of one or more persons which, to his knowledge, are conducted in contravention of section 206, 207, 208, 209 or 210 if —

- (a) the person, or a person associated with the person, has conducted such market operations; or
- (b) the person, or a person associated with the 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, the statement or information.

### **Penalties under this Division**

**212.**—(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 him 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.

### *Division 3 — Insider Trading*

#### **Application of this Division**

**213.** This Division shall apply to —

- (a) acts occurring within Singapore, in relation to —
  - (i) securities of any corporation, whether formed or carrying on business in Singapore or elsewhere;
  - (ia) securities of any business trust;
  - (ii) securities listed for quotation or quoted on a securities market in Singapore or elsewhere; or
  - (iii) securities traded on a futures market in Singapore or elsewhere; and

- (b) acts occurring outside Singapore, in relation to —
- (i) securities of a corporation that is formed or carries on business in Singapore;
  - (ia) securities of a business trust, the trustee of which is formed in Singapore or carries on business on behalf of the business trust in Singapore;
  - (ii) securities listed for quotation or quoted on a securities market in Singapore; or
  - (iii) securities traded on a futures market in Singapore.
- [1/2005]*

### **Interpretation of this Division**

**214.** In this Division —

“debenture” has the same meaning as in 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;
  - (ii) dealing in securities; or
  - (iii) trading in futures contract;

- (d) information relating to the financial performance of a corporation or business trust, or otherwise;
- (e) information that a person proposes to enter into, or had previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and
- (f) matters relating to the future;

“purchase”, in relation to securities, includes, in the case of an option contract 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;

“securities” means —

- (a) in relation to a corporation, for the purposes of sections 213(a)(i) and (b)(i) and 218 —
  - (i) debentures, stocks or shares issued or proposed to be issued by a corporation;
  - (ii) any right, option or derivative in respect of any such debentures, stocks or shares;
  - (iii) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
    - (A) the value or price of any such debentures, stocks or shares;
    - (B) the value or price of any group of any such debentures, stocks or shares; or
    - (C) an index of any such debentures, stocks or shares;

[2/2009 wef 20/04/2009]

- (iv) a futures contract only if the commodity which is the subject of the futures contract is a share or stock of a corporation; or
  - (v) such other product or class of products as the Authority may prescribe,
- but does not include such product or class of products as the Authority may prescribe as not being securities;
- (b) in relation to a business trust, for the purposes of sections 213(a)(ia) and (b)(ia) and 218(1A) and (4A) —
    - (i) units in a business trust;
    - (ii) derivatives of units in a business trust;
    - (iii) debentures of a business trust;  
*[2/2009 wef 20/04/2009]*
    - (iv) any right, option or derivative in respect of any such debentures; or  
*[2/2009 wef 20/04/2009]*
    - (v) such other product or class of products as the Authority may prescribe,
- but does not include such product or class of products as the Authority may prescribe as not being securities;
- (c) in any other case —
    - (i) debentures or stocks issued or proposed to be issued by a government;
    - (ii) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporate;
    - (iii) any right, option or derivative in respect of any such debentures, stocks or shares;
    - (iv) any unit in a collective investment scheme;



- (v) any unit, or derivative of a unit, in a business trust;
- (vi) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
  - (A) the value or price of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust;
  - (B) the value or price of any group of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust; or
  - (C) an index of any such debentures, stocks, shares, units in a collective investment scheme or units in a business trust;  
*[2/2009 wef 20/04/2009]*
- (vii) a futures contract only if the commodity which is the subject of the futures contract is a share or share index, or stock or stock index; or  
*[2/2009 wef 20/04/2009]*
- (viii) such other product or class of products as the Authority may prescribe,  
but does not include —
  - (AA) bills of exchange;
  - (BB) promissory notes;  
*[2/2009 wef 20/04/2009]*
  - (CC) certificates of deposit issued by a bank or finance company; or
  - (DD) such other product or class of products as the Authority may prescribe as not being securities;

“sell”, in relation to securities, includes, in the case of an option contract 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 same meaning as in section 2 of the Business Trusts Act (Cap. 31A).

[1/2005]

### **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 the generality of paragraph (a) —
  - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose 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).

### **Material effect on price or value of securities**

**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 if the information would, or would be likely to,

influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

### **Trading and procuring trading in securities**

**217.**—(1) For the purposes of this Division, trading in securities that is ordinarily permitted on the securities market or futures market shall be taken to be permitted on that securities market or futures market even though trading in any such securities on that securities market or futures market is suspended.

(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 first-mentioned 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 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 of that corporation,

subsections (2), (3), (4), (5) and (6) shall apply.

[1/2005]

(1A) Subject to this Division, where —

(a) a person who is connected to any corporation, where such corporation —

(i) in relation to a business trust, acts as its trustee or manages or operates the business trust; or

(ii) in relation to a collective investment scheme 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 units of which are listed on a securities exchange, is the trustee or manager of the scheme,

*[2/2009 wef 29/07/2009]*

possesses information concerning that corporation, business trust or scheme, as the case may be, 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 of that corporation, of securities of that business trust or of units in that scheme, as the case may be; 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 of that corporation, of those securities of that business trust or of those units in that scheme, as the case may be,

subsections (2), (3), (4A), (5) and (6) shall apply.

*[1/2005]*

(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, any such securities referred to in subsection (1) or (1A), 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 referred to in subsection (1) or (1A), as the case may be.

[1/2005]

(3) Where trading in the securities referred to in subsection (1) or (1A) is permitted on the securities market of a securities exchange or futures market of a futures exchange, the connected person must not, directly or indirectly, communicate the information, 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, any such securities; or
- (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

[1/2005]

(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 he was connected; and
- (b) the information was not generally available,

it shall be presumed, until the contrary is proved, that the connected person knew at the material time that —

- (i) the information was not generally available; and
- (ii) if the information were generally available, it might have a material effect on the price or value of securities of that corporation.

[1/2005]

(4A) In any proceedings for a contravention of subsection (2) or (3) against a person connected to a corporation which —

- (a) in relation to a business trust, acts as its trustee or manages or operates the business trust; or
- (b) in relation to a collective investment scheme, is the trustee or manager of the scheme,

as the case may be, referred to in subsection (1A), where the prosecution or plaintiff proves that the connected person was at the material time —

- (i) in possession of information concerning the corporation, business trust or scheme, as the case may be; and
- (ii) the information was not generally available,

it shall be presumed, until the contrary is proved, that 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 the price or value of securities of that corporation, of securities of that business trust or of units in the scheme, as the case may be.

[1/2005]

(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) he is an officer of that corporation or of a related corporation;
  - (ii) he is a substantial shareholder in that corporation or in a related corporation; or
  - (iii) he occupies a position that may reasonably be expected to give him access to information of a kind to which this section applies by virtue of —
    - (A) any professional or business relationship existing between himself (or his employer or

a corporation of which he 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.

[1/2005]

[2/2009 wef 01/10/2012]

(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 (referred to in this section as 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; 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,

subsections (2) and (3) shall apply.

- (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; 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.

(3) Where trading in the securities referred to in subsection (1) is permitted on the securities market of a securities exchange or futures market of a futures exchange, the insider must not, directly or indirectly, communicate the information, 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, any such securities; or
- (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

### **Not necessary to prove intention to use**

**220.**—(1) For the avoidance of 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.

[1/2005]

(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 him 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.

**Exception for redemption of units in collective investment scheme**

**222.** Sections 218(2) and 219(2) shall 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.

[1/2005]

**Exception for underwriters**

**223.**—(1) Sections 218(2) and 219(2) shall not apply in respect of —

- (a) subscribing for, or purchasing, securities under an underwriting agreement or a sub-underwriting agreement;
- (b) entering into an agreement referred to in paragraph (a); or

- (c) selling securities subscribed for, or purchased, under an agreement referred to in paragraph (a).

[1/2005]

(2) Sections 218(3) and 219(3) shall not apply in respect of the communication of information in relation to securities —

- (a) to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities; or
- (b) by a person who may be required under an underwriting agreement to subscribe for, or purchase, any such securities 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;
- (ii) subscribe for, or purchase, any such securities.

[1/2005]

### **Exception for purchase pursuant to legal requirement**

**224.**—(1) Sections 218(2) and 219(2) shall not apply in respect of the purchase of securities 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.

[16/2003]

(2) Sections 218(2) and 219(2) shall not apply in respect of the sale of securities pursuant to any requirement imposed by the Government or any requirement imposed under any written law or order of court.

[16/2003]

### **Exception for information communicated pursuant to legal requirement**

**225.** Sections 218(3) and 219(3) shall 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 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 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 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 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 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.

[5/2005]

(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.

[5/2005]

(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 is taken to possess information that is in the possession of another partner, a manager or an employee of the partnership.

[5/2005]

### **Exception for knowledge of person'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 merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

### **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 merely because it is aware that it proposes to enter into or has previously entered into, one or more transactions or agreements in relation to those securities.

(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 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.

(3) Subsection (2) shall 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 merely because he 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.

(5) Subsection (4) shall 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 securities or trade in futures contracts, 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 that are traded on the stock market or futures market if —

(a) the holder or representative entered into the transaction or agreement concerned on behalf of another person (referred to in this section as 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;

*[2/2009 wef 26/11/2010]*

(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) Nothing in this section shall affect 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 first-mentioned person's possession, it is a defence if the court is satisfied that —

- (a) the information came into the first-mentioned 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 first-mentioned 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

him 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 which resulted in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum —

(a) not exceeding 3 times —

(i) the amount of the profit that the person gained; or

(ii) the amount of the loss that he avoided,

as a result of the contravention; or

(b) equal to \$50,000 if the person is not a corporation, or \$100,000 if the person is a corporation,

whichever is the greater.

(3) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which did not result in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(4) Notwithstanding 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 shall be construed to prevent 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 shall be payable to the Authority.



(7) If the person fails to pay the civil penalty imposed on him 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 as though the civil penalty were a judgment debt due to the Authority.

[1/2005]

(8) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, shall also be available to a defendant to an action under this section in respect of that contravention.

[SIA, s.104A]

### **Action under section 232 not to commence, etc., in certain situations**

**233.**—(1) An action under section 232 shall 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 shall 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 he has been acquitted on the ground of the withdrawal of the charge against him.

(3) An action under section 232 shall 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 him 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 which resulted in his gaining a profit or avoiding a loss (referred to in this section and sections 235 and 236 as

the contravening person) shall, whether or not he had been convicted or had a civil penalty imposed on him in respect of that contravention, be liable to pay compensation to any person (referred to in this section and sections 235 and 236 as the claimant) who —

- (a) contemporaneously with the contravention, had subscribed for, purchased or sold securities, or entered into futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and
- (b) had suffered loss by reason of the difference between —
  - (i) the price at which the securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading were dealt in or traded contemporaneously with the contravention; and
  - (ii) the price at which the securities, futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention had not occurred.

*[2/2009 wef 01/10/2012]*

(2) The amount of compensation that the contravening person 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 to the same claimant in respect of the same contravention under an order of court or an agreement to pay by any defendant, defendant corporation or defendant partnership under Division 5 or under an order for disgorgement under section 236L, up to the maximum recoverable amount.

(3) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, shall also be available to a defendant to an action under this section in respect of the contravention.

(4) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing or trading in which the loss occurred.

(5) In determining whether a dealing in securities, trading in futures contracts, or leveraged foreign exchange trading took place contemporaneously with the contravention under subsection (1), the court shall take into account the following matters:

- (a) the volume of securities, futures contracts, or contracts in connection with leveraged foreign exchange trading of the same description dealt in or traded between the date and time of the contravention and the date and time of the dealing in securities, trading in futures contracts, or leveraged foreign exchange trading;
- (b) the date and time the contravention, if it was effected by a transaction or transactions involving the subscription for securities, purchase or sale of securities, trading in futures contracts or leveraged foreign exchange trading, was cleared and settled;
- (c) whether the dealing in securities, trading in futures contracts, or leveraged foreign exchange trading took place before or after the contravention;
- (d) in the case of a contravention under section 203, 218 or 219, whether the dealing in securities 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.

(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 he 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 to other claimants under this section in respect of the same contravention.

**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 his 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 his 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,

shall 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, shall comply with such directions relating to the filing and proof of his claim under section 236 as that court may issue in his case.

**Civil liability in event of conviction, etc.**

**236.**—(1) Notwithstanding 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 him 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 which resulted in his gaining a profit or avoiding a loss, the court which convicted him or made the order against him (referred to in this section as 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) For the purposes of subsection (1), the relevant court shall 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) The relevant court may, after the expiry of the date fixed under subsection (1), make an order against the contravening person to pay to each claimant who has filed and proven his claim for compensation an amount —

- (a) equal to the amount of compensation which that claimant has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 234 against the contravening person himself; or
- (b) equal to the pro-rated portion of the maximum recoverable amount, 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.

(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 wef 02/01/2011]

(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 (Cap. 322, R 5) 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”, for the purposes of 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 wef 01/10/2012]

*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 (referred to in this section as 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) 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.

(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.

(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 in this Part, which contravention resulted in the corporation gaining a profit or avoiding a loss, the court may make an order against the corporation for the payment of a civil penalty of a sum —

(a) not exceeding 3 times —

(i) the amount of the profit that the corporation gained;  
or

(ii) the amount of the loss that it avoided,

as a result of the contravention by the contravening person;  
or

(b) equal to \$100,000,

whichever is the greater.

(5) 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 in this Part, which contravention did not result in the corporation gaining a profit or avoiding a loss, the court may make an order against the corporation for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.



(6) Sections 232(4) to (7) and 233 shall apply in relation to an action brought against a corporation under subsection (3) as they apply in relation to an action under section 232.

(7) Any defence that would be available to —

(a) the contravening person if he were prosecuted for his contravention; or

(b) the corporation if it were prosecuted under subsection (1) in respect of that contravention,

shall also be available to the corporation in an action under subsection (3) in respect of that contravention.

(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.

(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

conduct may fairly be assumed to represent the corporation's policy.

[2/2009 wef 01/10/2012]

**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 (referred to in this section as 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) 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.

(3) If the court is satisfied on a balance of probabilities that the corporation has committed a contravention under subsection (1), which resulted in the corporation gaining a profit or avoiding a loss, the court may make an order against the corporation for the payment of a civil penalty of a sum —

(a) not exceeding 3 times —

(i) the amount of the profit that the corporation gained;  
or

(ii) the amount of the loss that it avoided,

as a result of the contravention by the contravening person;  
or

(b) equal to \$100,000,

whichever is the greater.

(4) If the court is satisfied on a balance of probabilities that the corporation has committed a contravention under subsection (1),

which did not result in the corporation gaining a profit or avoiding a loss, the court may make an order against the corporation for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(5) Sections 232(4) to (7) and 233 shall apply in relation to an action brought against a corporation under subsection (2) as they apply in relation to an action under section 232.

(6) Any defence that would be available to the contravening person if he were prosecuted for his contravention shall also be available to the corporation in an action under subsection (2) in respect of its failure to prevent or detect that contravention.

(7) For the purposes of subsection (1), in determining whether a contravention is attributable to the negligence of a corporation, the court shall 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); and
- (c) such other factors as the court may consider relevant.

*[2/2009 wef 01/10/2012]*

### **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) shall, whether or not it had been convicted or had a civil penalty imposed on it, be liable to pay compensation to any person (referred to in this section as the claimant) who —

- (a) contemporaneously with the contravention by the contravening person, had subscribed for, purchased or sold securities, or entered into any futures contract, or

contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and

(b) had suffered loss by reason of the difference between —

- (i) the price at which the securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading were dealt in or traded contemporaneously with the contravention by the contravening person; and
- (ii) the price at which the securities, futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention by the contravening person had not occurred.

(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.

(3) Any defence that would be available to —

- (a) the contravening person if he were prosecuted for his 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),

shall also be available to the defendant corporation in an action under this section in respect of that contravention.

(4) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing or trading in which the loss occurred.

(5) In determining whether the dealing or trading took place contemporaneously with the contravention by the contravening person, the court shall take into account the matters set out in section 234(5).

(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 wef 01/10/2012]*

*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 (referred to in this section as 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) 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.

(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.

(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 in this Part, which contravention resulted in the partnership or limited liability partnership gaining a profit or avoiding a loss, the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum —

- (a) not exceeding 3 times —
  - (i) the amount of the profit that the partnership or limited liability partnership gained; or
  - (ii) the amount of the loss that it avoided,as a result of the contravention by the contravening person;  
or

(b) equal to \$100,000,

whichever is the greater.

(5) 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 in this Part, which contravention did not result in the partnership or limited liability partnership gaining a profit or avoiding a loss, 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 and not more than \$2 million.

(6) Sections 232(4) to (7) and 233 shall 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.

(7) Any defence that would be available to —

- (a) the contravening person if he were prosecuted for his contravention; or
- (b) the partnership or limited liability partnership if it were prosecuted under subsection (1) in respect of that contravention,

shall also be available to the partnership or limited liability partnership in an action under subsection (3) in respect of that contravention.

(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.

(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 conduct may fairly be assumed to represent the partnership or limited liability partnership’s policy.

[2/2009 wef 01/10/2012]

### **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 (referred to in this section as 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) 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.

(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), which resulted in the partnership or limited liability partnership gaining a profit or avoiding a loss, the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum —

(a) not exceeding 3 times —

(i) the amount of the profit that the partnership or limited liability partnership gained; or

(ii) the amount of the loss that it avoided,

as a result of the contravention by the contravening person;  
or

(b) equal to \$100,000,

whichever is the greater.

(4) If the court is satisfied on a balance of probabilities that the partnership or limited liability partnership has committed a contravention under subsection (1), which did not result in the partnership or limited liability partnership gaining a profit or avoiding a loss, 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 and not more than \$2 million.

(5) Sections 232(4) to (7) and 233 shall 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.

(6) Any defence that would be available to the contravening person if he were prosecuted for his contravention shall also be 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.

(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 shall 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); and
- (c) such other factors as the court may consider relevant.

[2/2009 wef 01/10/2012]

### **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) shall, 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, be liable to pay compensation to any person (referred to in this section as the claimant) who —

- (a) contemporaneously with the contravention by the contravening person, had subscribed for, purchased or sold securities, or entered into any futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and
- (b) had suffered loss by reason of the difference between —
  - (i) the price at which the securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading were dealt in

or traded contemporaneously with the contravention by the contravening person; and

- (ii) the price at which the securities, futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention by the contravening person had not occurred.

(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.

(3) Any defence that would be available to —

- (a) the contravening person if he were prosecuted for his 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),

shall also be available to the defendant partnership in an action under this section in respect of that contravention.

(4) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing or trading in which the loss occurred.

(5) In determining whether the dealing or trading took place contemporaneously with the contravention by the contravening person, the court shall take into account the matters set out in section 234(5).

- (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 wef 01/10/2012]

*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 (referred to in this section as the contravening person) has contravened any provision in this Part —

- (a) with the consent or connivance of a person (referred to in this section as 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) 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, which contravention resulted in the defendant gaining a profit or avoiding a loss, the court may make an

order against the defendant for the payment of a civil penalty of a sum —

(a) not exceeding 3 times —

(i) the amount of the profit that the defendant gained; or

(ii) the amount of the loss that he avoided,

as a result of the contravention by the contravening person;  
or

(b) equal to \$50,000,

whichever is the greater.

(3) 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, which contravention did not result in the defendant gaining a profit or avoiding a loss, the court may make an order against the defendant for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(4) Sections 232(4) to (7) and 233 shall apply in relation to an action brought against a defendant under subsection (1) as they apply in relation to an action under section 232.

(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 were prosecuted under section 331 in respect of that contravention,

shall also be available to the defendant in an action under subsection (1) in respect of that contravention.

*[2/2009 wef 01/10/2012]*

### **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) shall, whether or not the defendant had been convicted under section 331 or had a civil

penalty imposed on him under section 236H, be liable to pay compensation to any person (referred to in this section as the claimant) who —

- (a) contemporaneously with the contravention by the contravening person, had subscribed for, purchased or sold securities, or entered into futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and
- (b) had suffered loss by reason of the difference between —
  - (i) the price at which the securities, futures contracts, or contracts or arrangements in connection with leveraged foreign exchange trading were dealt in or traded contemporaneously with the contravention by the contravening person; and
  - (ii) the price at which the securities, futures contracts or contracts or arrangements in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention by the contravening person had not occurred.

(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.

(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 were prosecuted under section 331 in respect of that contravention,

shall also be available to the defendant in an action under this section in respect of that contravention.

(4) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing or trading in which the loss occurred.

(5) In determining whether a dealing in securities, trading in futures contracts, or leveraged foreign exchange trading took place contemporaneously with the contravention by the contravening person, the court shall take into account the matters referred to in section 234(5)(a) to (e).

(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 he 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 wef 01/10/2012]

#### *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 (referred to in this section as 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 —

- (i) criminal proceedings in respect of the primary contravention against the contravening person; or
- (ii) 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 (i) or (ii) shall be stayed, and may not thereafter be continued except with the leave of court.

(2) Leave under subsection (1) may not be granted if —

- (a) in the criminal proceedings referred to in subsection (1)(i), the contravening person has been acquitted of the primary contravention; or
- (b) in the action under section 232 referred to in subsection (1)(ii), the court is not satisfied that the contravening person has committed the primary contravention.

(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) shall be stayed, and may not thereafter be continued except with the leave of court.

(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, shall comply with such directions relating to the filing and proof of his claim under section 236K as that court may issue in his case.

[2/2009 wef 01/10/2012]

### **Civil liability in event of conviction or civil penalty**

**236K.**—(1) Notwithstanding 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 or him 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) Section 236(2) to (5) shall apply, with the necessary modifications, to an action under subsection (1), and in such application —

- (a) any reference to the contravening person shall 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 shall 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.

(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 wef 01/10/2012]*

### **Order for disgorgement against third party**

**236L.**—(1) Without prejudice to 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 him 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 (referred to in this section as 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) The court shall 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.

(3) An application for an order for disgorgement under subsection (1) shall not be commenced after the expiration of 6 years from the date on which the contravention referred to in that subsection was committed.

(4) The court shall not make an order for disgorgement against a third party, or shall not 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 his position in reliance on his 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 him, as the case may be.

(5) Notwithstanding 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.

(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).

(7) The court may, after the expiry of the date fixed under subsection (6), order that each claimant who has filed and proven

his 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.

(8) Any sum remaining under the order for disgorgement shall be paid into the Consolidated Fund.

(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 him under the order for disgorgement as though it were a judgment debt due to him; 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.

(10) After the expiry of the date fixed under subsection (6), no person shall make any subsequent application under this section for an order for disgorgement against the third party in respect of the same contravention.

(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 (Cap. 322, R 5); or

(d) any appeal against the order is withdrawn.

(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.

### *Division 6 — Miscellaneous*

#### **Jurisdiction of District Court**

**237.** A District Court shall have jurisdiction to hear and determine any action under Division 4 or 5 or any application under section 236L regardless of the monetary amount.

*[2/2009 wef 01/10/2012]*

#### **Rules of Court**

**238.—**(1) Rules of Court (Cap. 322, R 5) 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 any application under section 236L; 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 wef 01/10/2012]*

(2) Without prejudice to the generality of 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 wef 01/10/2012]

## PART XIII

### OFFERS OF INVESTMENTS

#### *Division 1 — Shares and Debentures*

##### *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;

“debenture” includes debenture stock, bonds, notes and any other debt securities issued by a corporation or any other

entity, whether or not constituting a charge on the assets of the issuer but does not include —

- (a) a cheque, letter of credit, order for the payment of money or bill of exchange;
- (b) subject to the regulations made under this Act, a promissory note having a face value of not less than \$100,000 and having a maturity period of not more than 12 months; or
- (c) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder 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;

“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 same meaning as in section 4(1) of the Companies Act (Cap. 50);

“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, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

“issuer”, in relation to an offer of securities, means the entity that issued or will be issuing the securities being offered;

- “limited liability partnership” means any limited liability partnership whether registered in Singapore under the Limited Liability Partnerships Act (Cap. 163A) or otherwise;
- “minimum subscription”, in relation to any securities 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 so offered, failing which no securities 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 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 may be prescribed by the Authority;
- “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, means a promoter of the entity 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 his acting in a professional capacity;
- “prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of securities, and includes any document deemed to be a prospectus under section 257, but does not include —
- (a) a profile statement; or
  - (b) any material, advertisement or publication which is authorised by section 251 (other than subsection (5));
- “recognised securities exchange” means a corporation which has been declared by the Authority, by order published 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 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 he and his 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;

“securities” means —

(a) shares or units of shares of a corporation;

- (b) debentures or units of debentures of an entity;
- (c) interests in a limited partnership or limited liability partnership formed in Singapore or elsewhere; or
- (d) such other product or class of products as the Authority may prescribe,

but does not include such other product or class of products as the Authority may prescribe as not being securities;

“statutory meeting” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 241(1), as the case may be;

“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.

*[16/2003; 31/2004; 1/2005]*

(2) For the purposes of this Division, a statement shall be 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 shall be 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 shall be deemed to be a debenture.

[1/2005]

(3A) Notwithstanding 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.

[1/2005]

(4) In subsections (3A) and (5) —

“deposit” has the same meaning as in section 4B(4) of the Banking Act (Cap. 19);

“prescribed entity” means —

- (a) any bank licensed under the Banking Act; or
- (b) any entity or any entity of a class which has been declared by the Authority, by order published in the *Gazette*, to be a prescribed entity for the purposes of this subsection.

[1/2005]

(5) The Authority may, by notice in writing —

- (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 shall comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(6) For the purposes of this Division, a person makes an offer of any securities if, and only if, as principal —

- (a) he 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 by him or another person with whom he has made arrangements for that issue or sale; or
- (b) he 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 by him or another person with whom he has made arrangements for that issue or sale.

[1/2005]

(7) In subsection (6), “sale” includes any disposal for valuable consideration.

[1/2005]

(8) This Division applies only in relation to offers of securities made on or after the commencement of this Division.

[1/2005]

### **Authority may disapply this Division to certain offers**

**239A.** Notwithstanding any provision to the contrary in this Division, where —

- (a) an offer of securities is one to which (but for this section) both this Division and Division 2 apply; and
- (b) the Authority has by order published in the *Gazette* declared that this Division shall not apply to that offer or a class of offers to which that offer belongs,

then this Division shall not apply to that offer.

[1/2005]

**Modification of provisions to certain offers**

**239B.** The Authority may, if it thinks it necessary in the interest 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 as may be prescribed, and the provisions of this Division shall apply to such offer subject to such modifications or adaptations.

*Subdivision (2) — Prospectus requirements***Requirement for prospectus and profile statement, where relevant**

**240.**—(1) No person shall make an offer of securities 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 may be prescribed by the Authority.

[16/2003; 1/2005]

(2) A person who lodges a preliminary document with the Authority shall be 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 may be prescribed by the Authority.

(4) Notwithstanding subsection (1), an offer of securities may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this section as 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 may be prescribed by the Authority.

[16/2003; 1/2005]

(4A) The copy of a prospectus or profile statement lodged with the Authority shall 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 related parties, or that person and one or more of his 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 first-mentioned State who is authorised to sign the prospectus on its behalf.

[1/2005]

(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 behalf.

[1/2005]

(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 behalf.

[1/2005]

(5) No person shall make any offer of securities of an entity that has not been formed or does not exist.

[1/2005]

(6) [*Deleted Act 1/2005*]

(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 thereof 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 notice in writing to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.

[1/2005]

[2/2009 wef 29/03/2010]

(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 shall 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 wef 29/03/2010]

[1/2005]

(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.

(9) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall 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.

[1/2005]

(9A) A person making an offer of securities 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.

[1/2005]

(10) Subject to subsection (11) —

- (a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged shall be 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 shall be deemed for the purposes of subsection (8) to have been lodged when such amendment was lodged.

[16/2003; 1/2005]

(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 shall be deemed, for the purposes of subsection (8), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

[1/2005]

(11A) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.

[16/2003]

(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 shall 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.

[16/2003; 1/2005]

(13) The Authority shall 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.

[16/2003; 1/2005]

(14) The Authority shall 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.

[16/2003; 1/2005]

(15) The Authority shall 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, where applicable, the underlying entity 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, where applicable, the underlying entity.

[1/2005]

(16) Any person making an offer may, within 30 days after he is notified that the Authority has refused to register a prospectus or profile statement to which his offer relates under subsection (13) or (14), appeal to the Minister, whose decision shall be final.

[1/2005]

(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 is accepted, or securities are allotted, issued or sold, before a prospectus and, where applicable, profile statement in respect of the securities has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

- (i) the issue, circulation or distribution of the prospectus or profile statement;

(ii) the acceptance of the application to subscribe for or purchase the securities; or

(iii) the allotment, issue or sale of the securities,

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 thereof during which the offence continues after conviction.

[1/2005]

(18) This section is subject to section 240A.

[1/2005]

(19) For the purposes of subsections (13)(a) and (14)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

(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.

### **Debenture issuance programme**

**240A.**—(1) A prospectus for every offer of debentures or units of debentures that is part of a debenture issuance programme shall comprise —

(a) a base prospectus applicable to every offer under the debenture issuance programme; and

(b) a pricing statement applicable to that particular offer.

[1/2005]

(2) A profile statement for every offer of debentures or units of debentures that is part of a debenture issuance programme shall comprise —

(a) an extract from, or an abridged version of, a base prospectus referred to in subsection (1)(a) (referred to in this section as a base profile statement); and

(b) a pricing statement applicable to that particular offer.

[1/2005]

(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.

[1/2005]

(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.

[1/2005]

(5) For the avoidance of 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 shall be treated as having been lodged with and registered by the Authority in respect of every offer under that programme.

[1/2005]

(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 shall, unless the context otherwise requires or the Authority has prescribed otherwise, be read as a reference to both the base prospectus and the pricing statement.

[1/2005]

(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 shall, unless the context otherwise requires or the Authority has prescribed otherwise, be read as a reference to both the base profile statement and the pricing statement.

[1/2005]

(8) The Authority may, by regulations, prescribe how the provisions of this Subdivision shall apply to an offer referred to in subsection (1) or (2).

[1/2005]

(9) For the avoidance of doubt, a pricing statement may be registered by the Authority at any time after its lodgment with the Authority.

[1/2005]

### **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, 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 (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.

[16/2003; 1/2005]



(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.

[1/2005]

(1B) Subsections (7) to (16) shall not apply to a supplementary or replacement document which is lodged under subsection (1A).

[1/2005]

(1C) For the purposes of subsection (1A), an offer shall not be 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 a securities 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.

[1/2005]

(2) At the beginning of a supplementary document, there shall 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.
- [1/2005]*
- (3) At the beginning of a replacement document, there shall 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 shall 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.
- [1/2005]*
- (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 shall be 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 shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

[16/2003; 1/2005]

(6A) [*Deleted by Act 1/2005*]

(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 shall be 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 shall be taken to be the replacement profile statement.

[16/2003; 1/2005]

(7) If a supplementary document or replacement document is lodged with the Authority, the offer shall be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.

[1/2005]

(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, then —

- (a) where the securities have not been issued to the applicants, the person making the offer —

(i) shall —

- (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 notice in writing 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) shall, 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) shall —
  - (A) treat the applications as withdrawn and cancelled, in which case the applications shall be 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
- (b) where the securities have been issued to the applicants, the person making the offer —
  - (i) shall —
    - (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 notice in writing 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 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) shall, 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 which they do not wish to retain title in; or
- (iii) shall —
  - (A) treat the issue of the securities as void, in which case the issue shall be 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.

[1/2005]

(9) Subsections (8)(b) and (11) have effect notwithstanding sections 76 and 76A, and Division 3A of Part IV, of the Companies Act (Cap. 50).

[42/2005]

(10) An applicant who wishes to exercise his option under subsection (8)(a)(i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this,

whereupon that person shall, within 7 days from the receipt of such notification, pay to the applicant all moneys paid by the applicant on account of his application for the securities.

[1/2005]

(11) An applicant who wishes to exercise his option under subsection (8)(b)(i) or (ii) to return securities issued to him shall, 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 to that person, whereupon that person shall, 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, and the issue of those securities shall be deemed to be void.

[1/2005]

(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, then —

(a) where the securities have not been transferred to the applicants, the person making the offer —

(i) shall —

(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 notice in writing 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) shall, 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) shall —
  - (A) treat the applications as withdrawn and cancelled, in which case the applications shall be 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
- (b) where the securities have been transferred to the applicants, the person making the offer —
  - (i) shall —
    - (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 notice in writing 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 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) shall, 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 which they do not wish to retain title in; or
- (iii) shall treat the sale of the securities as void, in which case the sale shall be deemed void, and shall —
  - (A) if documents purporting to evidence title to the securities (referred to in this paragraph as 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
  - (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.

[1/2005]

(13) An applicant who wishes to exercise his option under subsection (12)(a)(i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days of the receipt of such notification, pay to the applicant all moneys paid by him on account of his application for the securities.

[1/2005]

(14) An applicant who wishes to exercise his option under subsection (12)(b)(i) or (ii) to return securities sold to him shall, 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 to the person making the offer, whereupon that person shall, within 7 days from the receipt of such notification and documents, if any, pay to the applicant all moneys paid by him for the securities and the sale of the securities shall be deemed to be void.

[1/2005]

(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 thereof 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 thereof during which the offence continues after conviction.

(17) For the purposes of subsection (1)(a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

**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 an order in writing (referred to in this section as a stop order) served on the person making the offer of securities to which the prospectus relates direct that no or no further securities be allotted, issued or sold.

*[16/2003; 1/2005]*

(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 an order in writing (referred to in this section as a stop order) served on the person making the offer of securities to which the profile statement relates direct that no or no further securities be allotted, issued or sold.

*[16/2003; 1/2005]*

(3) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the securities to which the prospectus or

profile statement relates has been issued or sold, and listed for quotation on a securities exchange and trading in them has commenced.

[1/2005]

(4) The Authority shall 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, where applicable, the underlying entity 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 any property of the person making the offer (being an entity), the issuer or, where applicable, the underlying entity.

[16/2003; 1/2005]

(5) Where applications to subscribe for securities to which the prospectus or profile statement relates have been made prior to the stop order, then —

- (a) where the securities have not been issued to the applicants —
  - (i) the applications shall be deemed to have been withdrawn and cancelled; and
  - (ii) the person making the offer shall, 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

(b) where the securities have been issued to the applicants —

(i) the issue of the securities shall be deemed to be void;  
and

(ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the securities.

[1/2005]

(6) Subsection (5)(b) has effect notwithstanding sections 76 and 76A, and Division 3A of Part IV, of the Companies Act (Cap. 50).

[42/2005]

(7) Where applications to purchase securities to which the prospectus or profile statement relates have been made prior to the stop order, then —

(a) where the securities have not been transferred to the applicants —

(i) the applications shall be deemed to have been withdrawn and cancelled; and

(ii) the person making the offer shall, 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

(b) where the securities have been transferred to the applicants, the sale shall be deemed to be void, and the person making the offer shall —

(i) if documents purporting to evidence title to the securities 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

- (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.

[1/2005]

(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 to which the prospectus or profile statement relates be allotted, issued or sold.

[1/2005]

(9) An interim stop order shall, unless revoked by the Authority, be 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.

[16/2003]

(10) Subsections (5) and (7) shall 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 thereof 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 thereof during which the offence continues after conviction.

(13) For the purposes of subsections (1)(a) and (2)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Contents of prospectus**

**243.**—(1) A prospectus for an offer of securities shall 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.

[1/2005]

(2) The prospectus shall, 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) shall relate to —

- (a) the rights and liabilities attaching to the securities;
- (b) 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 his related parties,

the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity; and

(d) in the case of an offer of units of shares or debentures, where the person making the offer, or an entity which 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 his related parties,

is or will be required to issue or deliver the relevant securities, or to meet financial or contractual obligations to the holders of those units, 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.

[1/2005]

(4) In deciding what information shall be included under subsection (1)(a), regard shall be had to —

(a) the nature of the securities 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.

[1/2005]

(5) For the purposes of subsection (2)(b), a person's knowledge is relevant only if he is one of the following persons:

(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 his 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 he participates in any way in the preparation of the prospectus;
- (f) a person named in the prospectus with his 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 his consent as having performed a particular professional or advisory function.

[1/2005]

(6) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

[1/2005]

(7) This section does not affect any liability that a person has under any other law.

**244.** [*Repealed by Act 16/2003*]

### **Retention of over-subscriptions and statement of asset-backing in debenture issues**

**245.**—(1) An entity shall 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.

[1/2005]

(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 shall 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 shall 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

### **Contents of profile statement**

**246.**—(1) A profile statement for an offer of securities shall contain —

- (a) the following particulars:
- (i) identification of the person making the offer and, where the person making the offer is not the issuer, the issuer and, where applicable, the underlying entity;

- (ii) identification of the persons signing the profile statement;
  - (iii) the nature of the securities;
  - (iv) the nature of the risks involved in investing in the securities;
  - (v) details of all amounts payable in respect of the securities (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.

[1/2005]

(2) A profile statement shall 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.

[1/2005]

(3) For the purposes of subsection (2)(a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **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 may be determined by the Authority.

[16/2003]

(2) The Authority shall 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.

[16/2003]

(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 may be determined by the Authority.

[16/2003]

(4) [*Deleted by Act 16/2003*]

(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 thereof 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 shall apply only to entities that are both of a governmental and international character.

[1/2005]

(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.

[1/2005]

(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.

[1/2005]

(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.

[1/2005]

(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.

[1/2005]

(6) Any prospectus or profile statement that complies with the terms of exemption granted by the Authority shall be deemed to be a prospectus or profile statement for the purposes of this Division and a copy of such prospectus or profile statement shall be registered by the Authority.

### **Expert's consent to issue of prospectus or profile statement containing statement by him**

**249.**—(1) Where an offer of securities 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 shall 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 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 consent.

[1/2005]

(1A) Every person making the offer shall 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.

[1/2005]

(1B) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[16/2003; 1/2005]

(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 may be determined by the Authority.

[16/2003; 1/2005]

(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 thereof during which the offence continues after conviction.

[16/2003]

### **Consent of issue manager and underwriter to being named in prospectus or profile statement**

**249A.**—(1) Where an offer of securities 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 shall 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 his 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 his consent.

[1/2005]

(2) Where an offer of securities 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 shall 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 his 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(4) Every person making the offer shall 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.

[1/2005]

(5) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the securities 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.

[1/2005]

### **Duration of validity of prospectus and profile statement**

**250.**—(1) No person shall make an offer of securities, or allot, issue or sell any securities, on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

[1/2005]

(2) In a case where an entity makes an offer of securities or where the securities being offered are those issued by an entity or a proposed entity, no officer or equivalent person or promoter of the entity or proposed entity shall authorise or permit —

(a) the offer of those securities; or

(b) the allotment, issue or sale of those securities,

on the basis of a prospectus or profile statement after the expiration of the period referred to in subsection (3).

[1/2005]

(3) The period under subsection (1) or (2) is —

- (a) in a case where the securities 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(5) An allotment, an issue or a sale of securities that is made in contravention of subsection (1) or (2) shall not, by reason only of that fact, be voidable or void.

[1/2005]

### **Restrictions on advertisements, etc.**

**251.**—(1) If a prospectus is required for an offer or intended offer of securities, a person shall 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,

unless the advertisement or publication is authorised by this section.

[1/2005]



(2) In determining whether a statement —

- (a) indirectly refers to an offer or intended offer of securities;  
or
- (b) is reasonably likely to induce persons to subscribe for or purchase securities,

regard shall be had to whether the statement —

- (i) 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;
- (ii) communicates information that materially deals with the affairs of the entity; and
- (iii) 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.

[1/2005]

(3) Notwithstanding 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 shall not circulate it to any other person; and
- (iii) a statement in bold lettering that no offer or agreement shall be made on the basis of the

preliminary document to purchase or subscribe for any securities 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 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.

[1/2005]

(4) Notwithstanding subsection (6), a person does not contravene subsection (1) by presenting 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 before a prospectus or profile statement is registered by the Authority.

[1/2005]

(5) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 240 without contravening subsection (1).

[1/2005]

(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 the securities, 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 will need to make an application in the manner set out in the prospectus or profile statement; and

- (d) a statement of how to obtain, or arrange to receive, a copy of the prospectus or profile statement.

[1/2005]

(7) To satisfy subsection (6), the advertisement or publication shall 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).

(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 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 will need to make an application in the manner set out in the prospectus or profile statement; and
- (c) it does not contain any information that is not included in the prospectus or profile statement.

[1/2005]

(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 a securities exchange, futures exchange or overseas securities exchange made by any person;

[2/2009 wef 29/07/2009]

- (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 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;
- (c) consists solely of a report about the issuer or the underlying entity that is published by the person making the offer, the issuer or the underlying entity, which —

- (i) does not contain information that materially affects the affairs of the issuer or 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 referred to 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 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);
- (f) is a report about the securities which are the subject of the offer or intended offer, published by someone who is not —
  - (i) the person making the offer, the issuer or the underlying entity;
  - (ii) a director or an equivalent person of the person making the offer, the issuer or the underlying entity;

- (iii) a person who has an interest in the success of the issue or sale of the securities; or
- (iv) a person acting at the instigation of, or by arrangement with, any person referred to 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  
*[2/2009 wef 01/10/2012]*
- (h) is a publication made by the person making the offer, the issuer or the underlying entity 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 first-mentioned publication does not contain any material information that is not included in the prospectus.

*[1/2005]*

- (10) A person does not contravene subsection (1) if —
- (a) he 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) he 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) shall not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

[1/2005]

(12) Any person who contravenes subsection (1) or who knowingly authorised or permitted the publication or dissemination 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 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 thereof during which the offence continues after conviction.

[1/2005]

(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 may be determined by the Authority.

(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 thereof during which the offence continues after conviction.

(16) For the purposes of this section, any reference to publishing a statement shall be construed as including a reference to making a statement, whether oral or written, which is reasonably likely to be published.

[1/2005]

(17) For the purposes of subsections (1) and (2), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

(18) For the purposes of subsection (2)(ii), the reference to affairs of the entity shall —

- (a) in the case where the entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); and
- (b) in any other case, be construed as a reference to such matters as may be prescribed by the Authority.

[1/2005]

(19) For the purposes of subsection (9)(c)(i), the reference to affairs of the issuer or underlying entity shall —

- (a) in the case where the issuer or underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); and
- (b) in any other case, be construed as a reference to such matters as may be prescribed by the Authority.

[1/2005]

### **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)) shall notify in writing the person making the offer of securities, as soon as practicable, if he 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.

[16/2003; 1/2005]

(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 shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Criminal liability for false or misleading statements**

**253.**—(1) Where an offer of securities 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;
- (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 thereof during which the offence continues after conviction.

[16/2003; 1/2005]

(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 shall not be taken to have contravened 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 his 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 who is, and who has consented to be, named in the prospectus or profile statement, if —
  - (i) he 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, he fails to take such remedial action as is appropriate in the circumstances without delay; or
  - (iii) he 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 who is, and who has consented to be, named in the prospectus or profile statement, if —
  - (i) he 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, he fails to take such remedial action as is appropriate in the circumstances without delay; or
  - (iii) he 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 his consent as having made —

- (i) the statement that is false or misleading, if he intentionally or recklessly makes that statement; or
  - (ii) a statement on which the false or misleading statement is based, if he knows that the second-mentioned statement is false or misleading and fails to take immediate steps to withdraw his 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.

[1/2005]

(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, he 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.

[1/2005]

(6) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Civil liability for false or misleading statements**

**254.**—(1) Where an offer of securities 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;
- (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) shall be 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.

[16/2003; 1/2005]

(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 his 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 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 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 his 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.

[1/2005]

(4) A person who acquires securities as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the securities in reliance on both the profile statement and the prospectus for the offer.

[1/2005]

(4A) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

(5) No action under subsection (1) shall 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 he —

- (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.

[1/2005]

(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 he —

- (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.

[1/2005]

(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 he placed reasonable reliance on information given to him 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.

[1/2005]

(4) For the purposes of subsection (3), a person is not the agent of an entity or individual merely because he performs a particular professional or advisory function for the entity or individual.

[1/2005]

(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 he publicly withdrew his consent to being named in the prospectus or the profile statement in that way.

[1/2005]

(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 he was not aware of the matter.

(7) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

**256.** [Repealed by Act 1/2005]

### **Document containing offer of securities for sale deemed prospectus**

**257.—**(1) Subsection (2) applies where —

(a) an entity allots or agrees to allot to any person any securities of the entity with a view to all or any of them being subsequently offered for sale to another person; and

(b) such offer (referred to in this section as a subsequent offer) does not qualify for an exemption under Subdivision (4) of this Division (other than section 280).

[1/2005]

(2) Any document by which the subsequent offer is made shall for all purposes be deemed to be a prospectus issued by the entity, and the entity shall for all purposes be 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, shall apply and have effect accordingly as if —

- (a) an offer of securities has been made; and
- (b) persons accepting the subsequent offer in respect of any securities were subscribers therefor,

but without prejudice to the liability, if any, of the persons making the subsequent offer, in respect of statements or non-disclosures in the document or otherwise.

*[16/2003; 1/2005]*

(3) For the purposes of this Act, it shall, unless the contrary is proved, be sufficient evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being subsequently offered for sale if it is shown —

- (a) that an offer of the securities 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 had not been so received.

*[1/2005]*

(4) The requirements of this Division as to prospectuses shall have effect as though the persons making the subsequent offer were persons named in the prospectus as directors or equivalent persons of the entity.

*[1/2005]*

(5) In addition to complying with the other requirements of this Division, the document making the subsequent offer shall state —

- (a) the net amount of the consideration received or to be received by the entity in respect of the securities being offered; and
- (b) the place and time at which a copy of the contract under which the securities have been or are to be allotted may be inspected.

*[1/2005]*

**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 offered to him shall, until the allotment of the securities, be held by the person making the offer of the securities 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.

[1/2005]

(2) There shall be 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

**Allotment of securities where prospectus indicates application to list on securities exchange**

**259.**—(1) Where a prospectus states or implies that application has been or will be made for permission for the securities offered thereby to be listed for quotation on any securities exchange, and —

- (a) the permission is not applied for in the form required by the securities 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 securities exchange,

then —

- (i) any allotment whenever made of securities made on an application in pursuance of the prospectus shall, subject to subsection (3), be void; and
- (ii) any person who continues to allot such securities 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 thereof during which the offence continues after conviction.

[1/2005]

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), the person making the offer shall, subject to subsection (3), immediately repay without interest all moneys received from applicants in pursuance of 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) he shall be 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 shall be jointly and severally liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days.

[1/2005]

(3) Where in relation to any securities of an entity —

- (a) permission is not applied for as specified in subsection (1)(a); or
- (b) permission is not granted as specified in subsection (1)(b),

the Authority may, on the application of the entity made before any of the securities is purported to be allotted, exempt the allotment of the

securities from the provisions of this section, and the Authority shall give notice of such exemption in the *Gazette*.

[1/2005]

(4) A director or an equivalent person shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

[1/2005]

(5) Any condition requiring or binding any applicant for securities to waive compliance with any requirement of this section or purporting to do so shall be void.

[1/2005]

(6) Without limiting the application of any of its provisions, this section shall have effect —

(a) in relation to any securities agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus offering securities for sale as if a reference to sale were substituted for a reference to allotment.

[1/2005]

(7) All moneys received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the person making the offer may become liable to repay it under subsection (2).

[16/2003; 1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(9) Where the securities exchange has within the time specified in subsection (1)(b) granted permission subject to compliance with any requirements specified by the securities exchange, permission shall be deemed to have been granted by the securities exchange if the

directors or equivalent persons have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(11) A person shall not issue a prospectus inviting persons to subscribe for securities of an entity if it includes —

- (a) a false or misleading statement that permission has been granted for those securities to be listed for quotation on, dealt in or quoted on any securities 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, on any securities exchange, or to any requirement of a securities 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 securities exchange within 3 days from the date of the issue of the prospectus; or
  - (ii) that statement has been approved by the Authority for inclusion in the prospectus.

[1/2005]

(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 thereof 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 securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the securities to which the prospectus relates to be listed for quotation on the securities exchange.

[1/2005]

### **Prohibition of allotment unless minimum subscription received**

**260.**—(1) No allotment shall be made of any securities of a company unless —

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the securities so subscribed has been received by the company,

but if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

[1/2005]

(2) The minimum subscription shall —

- (a) be calculated based on the price at which each share or debenture, or each unit of share or debenture, is or will be offered; and
- (b) be reckoned exclusively of any amount payable otherwise than in cash.

[1/2005]

(3) The amount payable on application on each share or debenture, or each unit of share or debenture, offered shall not be less than 5% of the price at which the share or debenture, or unit of share or debenture, is or will be offered.

[1/2005]

(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 shall be immediately repaid to them without interest.

[1/2005]

(5) If any money referred to in subsection (4) is not repaid within 5 months after the issue of the prospectus, the directors of the company shall be 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; but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) An allotment made by a company to an applicant in contravention of this section shall be voidable at the option of the applicant which option may be exercised by written notice served on the company —

- (a) within one month after the holding of the statutory meeting of the company and not later; or
- (b) in any case 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 and not later,

and the allotment shall be so voidable notwithstanding that the company is in the course of being wound up.

(7) 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 to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee has sustained or incurred thereby.

(8) No proceedings for the recovery of any compensation under subsection (7) shall be commenced after the expiration of 2 years from the date of the allotment.

(9) Any condition requiring or binding any applicant for securities to waive compliance with any requirement of this section shall be void.

[1/2005]

*Subdivision (3) — Debentures***Preliminary provisions**

**261.**—(1) Subject to subsection (1A), this Subdivision shall apply where an entity makes an offer of debentures.

[1/2005]

(1A) Sections 268, 269 and 270 shall not apply if the borrowing entity is a prescribed entity.

[1/2005]

(1B) In subsections (1A) and (1C), “prescribed entity” means —

- (a) any bank licensed under the Banking Act (Cap. 19); or
- (b) any entity or entity of a class which has been declared by the Authority, by order published in the *Gazette*, to be a prescribed entity for the purposes of this section.

[1/2005]

(1C) The Authority may, by notice in writing —

- (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 shall comply with every such condition or restriction imposed on it by the Authority that has not been revoked by the Authority.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(2) [*Deleted by Act 1/2005*]

(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 (Cap. 50).



**Offer of asset-backed securities**

**262.**—(1) An offer of asset-backed securities shall be 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.

[1/2005]

(2) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as may be determined by the Authority.

[1/2005]

(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.

[1/2005]

**263.** [*Repealed by Act 16/2003*]

**264.** [*Repealed by Act 16/2003*]**Power of court in relation to certain irredeemable debentures**

**265.**—(1) Notwithstanding anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the court so orders, be 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.

[1/2005]

(2) Subsection (1) shall 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.

[1/2005]

**Duties of trustees****266.**—(1) [*Deleted by Act 16/2003*]

(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.

[1/2005]

(3) The Authority, on such application —

(a) after giving the borrowing entity an opportunity of making representations in relation to that application, by order in writing 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, shall direct the trustee to apply to the court for an order under subsection (5); and the trustee shall apply accordingly.

[1/2005]

(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, shall apply to the court for an order under subsection (5).

[1/2005]

(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 shall have regard to the rights of all creditors of the borrowing entity.

[1/2005]

(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 shall 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 shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing entity.

[1/2005]

(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.

[1/2005]

### **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 shall be held and conducted in such manner as the court directs, under the chairmanship of a person nominated by the trustee or such other person as the meeting appoints.

### **Right of Authority, securities exchange and holders of debentures to apply to court for order**

**267A.** Without prejudice to any other right of action or remedy in any written law or rule of law, a holder of debentures, the Authority or a securities exchange (in a case where the debentures are quoted or listed for quotation on that securities exchange) may apply to the court for an order to compel the trustee for the holders of such debentures to perform his 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.

[16/2003]

### **Obligations of borrowing entity**

**268.**—(1) Where there is a trustee for the holders of any debentures of a borrowing entity, the directors or equivalent persons of the borrowing entity shall —

- (a) at the end of a period not exceeding 3 months ending on a day (being a day after the date of the issue of the relevant prospectus) which the trustee is hereby required to notify the borrowing entity in writing; and
- (b) at the end of each succeeding period thereafter, being a period of 3 months or such shorter time as the trustee may, in any special circumstances allow,

prepare a report that relates to that period and complies with the requirements of subsection (2) and within one month after the end of each such period lodge a copy of the report relating to that period with the Authority and with the trustee.

[1/2005]

(2) The report referred to in subsection (1) shall be signed by not less than 2 of the directors or equivalent persons on behalf of all of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of subsection (1), shall state —

- (a) whether or not the limitations on the amount that the entity may borrow have been exceeded;
- (b) whether or not the borrowing entity and each of its guarantor entities have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;
- (c) whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;

- (d) whether or not any circumstances affecting the borrowing entity, its subsidiaries or its guarantor entities or any of them have occurred which materially affect any security or charge included in or created by the debentures or any trust deed and, if so, particulars of those circumstances;
- (e) whether or not there has been any substantial change in the nature of the business of the borrowing entity or any of its subsidiaries or any of its guarantor entities since the debentures were first issued which has not previously been reported upon as required by this section and, if so, particulars of that change; and
- (f) where the borrowing entity has deposited money with or lent money to or assumed any liability of a corporation which is related to the borrowing entity, particulars of —
  - (i) the total amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report; and
  - (ii) the total amounts owing to the borrowing entity in respect of money so deposited or lent and the extent of any liability so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liabilities which are secured and those which are unsecured, but not including any deposit with or loan to or any liability assumed on behalf of a corporation if that corporation has guaranteed the repayment of the debentures of the borrowing entity and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the borrowing entity.

[1/2005]

(3) Any person who fails to comply with 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 thereof during which the offence continues after conviction.

(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 shall, whether or not any demand therefor has been made —

- (a) in writing furnish 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 furnish the trustee, within 7 days after the advance, with particulars of the amount or amounts in fact advanced.

[1/2005]

(5) Where any such advance referred to in subsection (4)(b) is merged in a current account with bankers or trade creditors, it shall be sufficient for particulars of the net amount outstanding in respect of any such advance to be furnished every 3 months.

(6) The directors or equivalent persons of every borrowing entity and of every guarantor entity shall cause to be made out and lodged with the Authority and 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.

[1/2005]

(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 thereof during which the offence continues after conviction.



(8) Section 201(4) to (7) and (11) to (16) and section 207(1), (2) and (7) of the Companies Act (Cap. 50), shall, with such adaptations as are necessary, be 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 a profit and loss account and balance-sheet referred to in those sections.

(9) Where —

- (a) the directors or equivalent persons of a borrowing entity do not lodge with the trustee for the holders of debentures a report as required by subsection (1); or
- (b) the directors or equivalent persons of a borrowing entity or the directors of a guarantor entity do not lodge with the trustee the balance-sheets and profit and loss accounts as required by subsection (6) within the time prescribed,

the trustee shall immediately lodge notice of that fact with the Authority.

[1/2005]

(10) Notwithstanding 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 notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

(11) Where the trustee has by notice in writing given his 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, shall 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.

[1/2005]

(12) Notwithstanding 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.

[1/2005]

(13) The estimation of the directors or equivalent persons referred to in subsection (12) shall 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.

[1/2005]

### **Obligation of guarantor entity to furnish 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 notice in writing, require any of its guarantor entities to furnish it with any information relating to that guarantor entity which is, by this Subdivision, required to be contained in that report.

[1/2005]

(2) The guarantor entity shall furnish 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

### **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 shall, 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.

[16/2003; 1/2005]

(2) Each such report shall be included in the report required to be furnished 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 his opinion it is necessary for the protection of the interests of the holders of the debentures, shall give notice in writing 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.

[1/2005]

(4) The trustee shall not give notice under subsection (3) if he 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.  
*[1/2005]*
- (5) Upon receipt by the borrowing entity of a notice referred to in subsection (3), the borrowing entity shall be liable to repay, and on demand in writing by a person entitled thereto shall immediately repay to him any moneys owing to him 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 notice in writing 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 notice in writing 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.  
*[1/2005]*
- (6) Where the borrowing entity has given a notice in writing 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 shall apply and have 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.

[1/2005]

### **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, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee.

(2) Subsection (1) shall 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 his ceasing to act.

(3) Subsection (1) shall not operate —

(a) to invalidate any provision in force on 29th 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 for no consideration**

**272.**—(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of shares or debentures of an

entity if no consideration is or will be given for the issue or transfer of the shares or debentures.

[1/2005]

(2) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of units of shares or debentures of an entity if —

- (a) no consideration is or will be given for the issue or transfer of the units of shares or debentures; and
- (b) no consideration is or will be given for the underlying shares or debentures on the exercise or conversion of the units of shares or debentures.

[1/2005]

### **Small offers**

**272A.**—(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to personal offers of securities of an entity 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 may be prescribed by the Authority 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 he makes the offer —
  - (i) the following statement in writing:

“This offer is made in reliance on the exemption under section 272A(1) of the Securities and Futures Act. 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 to which the offer (referred to in this sub-paragraph as the initial offer) relates shall 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 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;
- [2/2009 wef 29/07/2009]*
- (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 securities;
  - (ii) an exempt person in respect of dealing in securities; or
  - (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 securities, or who is exempted therefrom in respect of such dealing; and
- [2/2009 wef 29/07/2009]*  
*[1/2005]*
- (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 notice in writing of its intent to make the offer in reliance on the exemption under this subsection.

(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 he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

[1/2005]

(3) For the purposes of subsection (1), a personal offer of securities 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 —
    - (A) the person making the offer;
    - (B) the holder of a capital markets services licence to deal in securities;
    - (C) an exempt person in respect of dealing in securities;
    - (D) a person licensed under the Financial Advisers Act (Cap. 110) 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; or
- (F) 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 securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind.

[1/2005]

(4) In determining the amount raised by an offer, the following shall be included:

- (a) the amount payable for the securities at the time they are allotted, issued or sold;
- (b) if the securities are issued partly-paid, any amount payable at a future time if a call is made;
- (c) if the securities carry a right (by whatever name called) to be converted into other securities or to acquire other securities, any amount payable on the exercise of the right to convert them into, or to acquire, other securities.

[1/2005]

(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 securities issued by the same entity; or
- (b) by that person or another person from any offer of securities of an entity, units or derivatives of units in 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), section 282V(1) or 302B(1) shall be included.

[1/2005]

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(7) For the purpose of this section, an offer of securities made by a person acting as an agent of another person shall be treated as an offer made by that other person.

[1/2005]

(8) Where securities acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the securities to another person, Subdivisions (2) and (3) of this Division shall apply to the offer from the first-mentioned 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 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 —

- (CA) the person making the initial offer;
- (CB) the holder of a capital markets services licence to deal in securities;
- (CC) an exempt person in respect of dealing in securities;
- (CD) a person licensed under the Financial Advisers Act (Cap. 110) 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; or
- (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 securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind;

(iii) in respect of which the first-mentioned person has given the second-mentioned person —

(A) the following statement in writing:

“

This offer is made  
in reliance on the  
exemption under  
section 272A(8)  
(c) of the

Securities and Futures Act. 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 being offered shall 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 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 securities;

- (B) an exempt person in respect of dealing in securities; or
- (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 securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(c)(iii).

[1/2005]

(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, but does not include —

- (i) a document —
  - (A) purporting to describe the securities being offered, or the business and affairs of the person making the offer, the issuer or, where applicable, the underlying entity; and
  - (B) 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 being offered;
- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange, which is made by any person; or

[2/2009 wef 29/07/2009]

- (iii) 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 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.

[1/2005]

(11) In subsection (10)(i)(A), the reference to the affairs of the person making the offer, the issuer or, where applicable, the underlying entity shall —

- (a) in the case where the person making the offer, the issuer or the underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); and
- (b) in any other case, be construed as referring to such matters as may be prescribed by the Authority.

[1/2005]

### Private placement

**272B.**—(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to offers of securities of an entity 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;

[2/2009 wef 29/07/2009]

- (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 securities;
  - (ii) an exempt person in respect of dealing in securities;or

- (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 securities, or who is exempted therefrom in respect of such dealing; and

[2/2009 wef 29/07/2009]

[1/2005]

- (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 notice in writing 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) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(a).

[1/2005]

(3) In determining whether offers of securities 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 securities issued by the same entity is made by the first-mentioned person; or
- (b) an offer of securities of an entity, units or derivatives of units in a business trust, or units in a collective investment scheme, is made by the first-mentioned 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, section 282W or 302C shall be included.

[1/2005]

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(5) For the purposes of subsection (1) —

- (a) an offer of securities to an entity or to a trustee shall be 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 which are the subject of the offer;
- (b) an offer of securities to an entity or to a trustee shall be 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 which are the subject of the offer;
- (c) an offer of securities to 2 or more persons who will own the securities acquired as joint owners shall be treated as an offer to a single person;
- (d) an offer of securities to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;
- (e) offers of securities made by a person as an agent of another person shall be 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 by virtue of section 4, only the second-mentioned person shall be counted for the purposes of determining whether offers of the securities are made to no more than the applicable number of persons specified in subsection (1)(a); and
- (g) where —
  - (i) an offer of securities is made to a person in reliance on the exemption under subsection (1) with a view to



those securities 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 shall be counted for the purposes of determining whether offers of the securities are made to no more than the applicable number of persons specified in subsection (1)(a).

[1/2005]

(6) In subsection (1)(b), “advertisement” has the same meaning as in section 272A(10).

[1/2005]

### **Offer made under certain circumstances**

**273.**—(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities 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;
- (cd) it is an offer of securities of an entity —
  - (i) being an entity which is formed or constituted in Singapore or otherwise, whose securities are not listed for quotation on a securities exchange; or
  - (ii) being an entity which is not formed or constituted in Singapore, whose securities are listed for quotation on a securities 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 a securities 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 a securities 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 a securities 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 a securities 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 of a corporation made in the circumstances specified under section 306 of the Companies Act (Cap. 50);

- (d) it is an offer of shares or debentures (not being such excluded shares or excluded debentures as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange;
- (e) it is an offer of units of shares or debentures (not being such excluded units of shares or debentures as may be prescribed by the Authority) where —
  - (i) the units of shares or debentures have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange; or
  - (ii) an application has been or will be made for permission for the units of shares or debentures to be listed for quotation or quoted on a securities exchange and the shares or debentures have been previously issued and are listed for quotation on a securities exchange or a recognised securities exchange; or
- (f) it is made (whether or not in relation to securities that have been previously issued) by an entity to a qualifying person, where the securities are to be held by or for the benefit of the qualifying person and are the securities of the entity or any of its related parties.

[16/2003; 1/2005]

(1A) An offer of securities does not come within subsection (1)(d) or (e) if —

- (a) the securities being offered are borrowed by the issuer from an existing shareholder, holder of a debenture, or holder of units of shares or debentures, solely for the purpose of facilitating the offer of securities by the issuer; and
- (b) such borrowing is made under an agreement or arrangement between the issuer and the shareholder or holder which promises the issue or allotment of securities

by the issuer to the shareholder or holder at the same time or shortly after the offer.

[1/2005]

(2) An offer of securities comes within subsection (1)(f) only if 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 securities;
- (b) an exempt person in respect of dealing in securities; or
- (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 securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(3) [*Deleted by Act 1/2005*]

(4) For the purposes of subsection (1)(f), a person is a qualifying person in relation to an entity if he is 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 if he is the spouse, widow, widower or a child, adopted child or step-child below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee.

[1/2005]

(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 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,

then Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to such an offer for a period of 6 months from the date of the declaration.

[1/2005]

(6) The Authority may, on making a declaration under subsection (5), impose such conditions or restrictions on the offer as it may determine.

[16/2003; 1/2005]

(7) A declaration made under subsection (5) shall be final.

[16/2003]

(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 thereof during which the offence continues after conviction.

[16/2003]

(9) In subsection (1)(b) and (c), “unlisted corporation” means a corporation —

(a) that is not a company; and

(b) the securities of which are not listed for quotation on any securities exchange.

[1/2005]

(10) In subsection (1)(ca) and (cb), “corporation” means a corporation that is not a company.

[1/2005]

### **Offer made to institutional investors**

**274.** Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities, whether or not they have been previously issued, made to an institutional investor.

[1/2005]

### **Offer made to accredited investors and certain other persons**

**275.—**(1) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities, 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;  
*[2/2009 wef 29/07/2009]*
- (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 securities;
  - (ii) an exempt person in respect of dealing in securities; or
  - (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 securities, or who is exempted therefrom in respect of such dealing; and  
*[2/2009 wef 29/07/2009]*  
*[1/2005]*
- (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 notice in writing 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.

(1A) Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities to a person who acquires the securities as principal, whether or not the securities have been previously issued, if —

- (a) the offer is on terms that the securities 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 or other assets;
- (b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer or intended offer;  
*[2/2009 wef 29/07/2009]*
- (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 securities;
  - (ii) an exempt person in respect of dealing in securities; or
  - (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 securities, or who is exempted therefrom in respect of such dealing; and  
*[1/2005]*
- (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 notice in writing 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, but does not include —

- (i) an information memorandum;
  - (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange, which is made by any person; or
- [2/2009 wef 29/07/2009]*
- (iii) 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 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 the securities being offered, or the business and affairs of the person making the offer, the issuer or, where applicable, the underlying entity; 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 (1A) is to be made so

as to assist them in making an investment decision in respect of the securities 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).

[1/2005]

(2A) In the definition of “information memorandum” in subsection (2), the reference to the affairs of the person making the offer, the issuer or, where applicable, the underlying entity shall —

- (a) in the case where the person making the offer, the issuer or the underlying entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); and
- (b) in any other case, be construed as referring to such matters as may be prescribed by the Authority.

[1/2005]

(3) Notwithstanding any requirement in section 99 or any regulation made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires securities under section 274 or this section for his own

account shall be considered an exempt person even though he does not comply with that requirement.

[1/2005]

(4) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (1A)(a).

[1/2005]

### **Offer of securities acquired pursuant to section 274 or 275**

**276.**—(1) Notwithstanding sections 272A, 272B, 273(1)(d), (e) and (f), 277, 278 and 279 but subject to subsection (7), where securities 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 shall apply to the offer resulting in that sale.

[1/2005]

(1A) The reference to the sale of securities under subsection (1) shall, in a case where the securities initially acquired are debentures, or units of shares or debentures, with an attached right of conversion into shares or debentures, include a reference to the sale of the converted shares or debentures.

(2) Where securities 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 shall not apply to the offer resulting in that sale.

[1/2005]

(3) Subject to subsection (7), 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,

shall not be transferred within 6 months after the corporation has acquired any securities pursuant to an offer made in reliance on an exemption under section 275 unless —

- (i) that transfer —
  - (A) is made only to institutional investors or relevant persons as defined in section 275(2); or
  - (B) arises from an offer referred to in section 275(1A);
- (ii) no consideration is or will be given for the transfer; or
- (iii) the transfer is by operation of law.

[1/2005]

[2/2009 wef 29/07/2009]

(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 shall not be transferred within 6 months after securities are acquired for the trust pursuant to an offer made in reliance on an exemption under section 275 unless —

- (i) that transfer —
  - (A) is made only to institutional investors or relevant persons as defined in section 275(2); or

- (B) 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 other assets;
- (ii) no consideration is or will be given for the transfer; or
- (iii) the transfer is by operation of law.

[1/2005]

[2/2009 wef 29/07/2009]

(5) For the avoidance of doubt, the reference to beneficiaries in subsection (4) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

[1/2005]

(6) For the avoidance of doubt, where any securities are acquired pursuant to an offer made in reliance on an exemption under section 274 or 275, an offer to sell those securities 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 first-mentioned offer.

[1/2005]

(7) Subsections (1), (3) and (4) shall not apply where the securities of the corporation acquired are of the same class as other securities of the corporation —

- (a) an offer of which has previously been made in or accompanied by a prospectus; and
- (b) which are listed for quotation on a securities exchange.

[2/2009 wef 29/07/2009]

### **Offer made using offer information statement**

**277.**—(1) Subject to subsection (1A), Subdivisions (2) and (3) of this Division (other than section 257) shall not apply to an offer of securities (not being such securities as may be prescribed by the Authority) issued by an entity whose shares are listed for quotation on a securities exchange, whether by means of a rights issue or otherwise, if —

- (a) in the case where the securities offered are units of shares or debentures, the shares or debentures are those of the entity that issued the units;
- (b) an offer information statement relating to the offer which complies with such form and content requirements as may be prescribed by the Authority is lodged with the Authority; and
- (c) either —
  - (i) the offer is made in or accompanied by the offer information statement referred to in paragraph (b); or
  - (ii) all the conditions in subsection (1B) are satisfied.

[1/2005]

[2/2009 wef 01/10/2012]

(1A) Subsection (1) shall only apply to an offer of securities 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 wef 01/10/2012]

(1B) The conditions referred to in subsection (1)(c)(ii) are —

- (a) the offer is made using any automated teller machine or such other electronic means as may be prescribed by the Authority;
- (b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —
  - (i) how he can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and
  - (ii) that he should read the offer information statement before submitting his application, before enabling him to submit any application to subscribe for or purchase securities; and
- (c) the person making the offer complies with such other requirements as the Authority may prescribe.

[2/2009 wef 01/10/2012]

(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 may be determined by the Authority.

[16/2003]

(3) Sections 249, 249A, 253, 254 and 255 shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

[1/2005]

(4) For the purposes of subsection (3) —

- (a) a reference in section 249 or 249A to the registration of the prospectus shall 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 under section 243 shall be read as a reference to any information prescribed under subsection (1)(b).

[16/2003; 1/2005]

(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 shall be lodged with the Authority at the same time as the lodgment of the statement.

[16/2003; 1/2005]

(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 shall be lodged with the Authority at the same time as the lodgment of the statement.

[1/2005]

### **Offer in respect of international debentures**

**278.**—(1) Subdivisions (2) and (3) of this Division (other than section 257) shall 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 securities 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).

[1/2005]

(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.

[1/2005]

(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 shall 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.

[1/2005]



**Making offer using automated teller machine or electronic means**

**280.**—(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of securities using —

- (a) any automated teller machine; or
- (b) such other electronic means as may be prescribed by the Authority,

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.

[1/2005]

(2) For the avoidance of 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).

[1/2005]

(3) Subsection (1) shall not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

- (a) how he can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and
- (b) that he should read the prospectus or, where applicable, profile statement before submitting his application,

before enabling him to submit any application to subscribe for or purchase securities.

[1/2005]

**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.

[16/2003]

(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 shall remain in effect unless it is withdrawn by the Authority.

(3) A revocation made under this section shall be final and conclusive and there shall be no appeal therefrom.

### **Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act**

**282.** For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

[1/2005]

#### *Division 1A — Business Trusts*

##### *Subdivision (1) — Interpretation*

### **Preliminary provisions**

**282A.—**(1) In this Division, unless the context otherwise requires —

“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 that 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;

“expert” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“immediate family”, in relation to an individual, means the individual’s spouse, son, adopted son, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

“issuer”, in relation to an offer of units or derivatives of units in a business trust, means —

- (a) in the case of units being offered, the trustee of the business trust in its capacity as the trustee that issued or will be issuing such units; or
- (b) in the case of derivatives of units being offered, the trustee of the business trust in its capacity as the trustee, or any other entity, that issued or will be issuing such derivatives of units;

“minimum subscription”, in relation to any units or derivatives of units in a business trust 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 units or derivatives of units so offered failing which no units or derivatives of units 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, units or derivatives of units in a business trust or proposed business trust to be issued or sold and which

contains the information required to be included in a prospectus under section 282F, except for such information as may be prescribed by the Authority;

“profile statement” means a profile statement referred to in section 282C(4);

“promoter”, in relation to a prospectus issued in connection with a business trust, means a promoter of the business trust 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 his acting in a professional capacity;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of units or derivatives of units in a business trust or proposed business trust and includes any document deemed to be a prospectus under section 282Q, but does not include —

(a) a profile statement; or

(b) any material, advertisement or publication which is authorised by section 282L (other than subsection (5) thereof);

“recognised securities exchange” means a corporation which has been declared by the Authority, by order published 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 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 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 he and his immediate family (whether directly or indirectly) have interests in voting shares of an aggregate of not less than 30% of the votes attached to all voting shares;

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 282D(1), as the case may be;

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 282D(1), as the case may be;

“trust deed” has the same meaning as “deed” in section 2 of the Business Trusts Act;

“trust property” has the same meaning as in section 2 of the Business Trusts Act.

[1/2005]

[2/2009 wef 19/11/2012]

(2) For the purposes of this Division, a statement shall be 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.

[1/2005]

(3) For the purposes of this Division, a person makes an offer of any units or derivatives of units in a business trust if, and only if, as principal —

- (a) he 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 or derivatives of units by him or another person with whom he has made arrangements for that issue or sale; or
- (b) he 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 or derivatives of units by him or another person with whom he has made arrangements for that issue or sale.

[1/2005]

(4) In subsection (3), “sale” includes any disposal for valuable consideration.

[1/2005]

### **Division not to apply to certain business trusts which are collective investment schemes**

**282B.** This Division does not apply to an offer of 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.

[1/2005]

### **Modification of provisions to certain offers**

**282BA.** The Authority may, if it thinks it necessary in the interest 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 or derivatives of units in a business trust as may be prescribed, and the provisions of this Division shall apply to such offer subject to such modifications or adaptations.

*Subdivision (2) — Prospectus requirements*

**Requirement for prospectus and profile statement, where relevant**

**282C.**—(1) No person shall make an offer of units or derivatives of units in a business trust unless —

- (a) the business trust is a registered business trust or recognised business trust; and
- (b) the offer —
  - (i) is made in or accompanied by a prospectus in respect of the offer —
    - (A) that is prepared in accordance with section 282F;
    - (B) a copy of which, being one that has been signed in accordance with subsection (5), is lodged with the Authority; and
    - (C) that is registered by the Authority; and
  - (ii) complies with such requirements as may be prescribed by the Authority.

[1/2005]

[2/2009 wef 01/10/2012]

(2) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.

[1/2005]

(3) A preliminary document referred to in subsection (2) shall contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.

[1/2005]

(4) Notwithstanding subsection (1), an offer of units or derivatives of units in a business trust may be made in or accompanied by an

extract from, or an abridged version of, a prospectus (referred to in this section as a profile statement), instead of a prospectus, if —

- (a) a prospectus in respect of such offer is prepared in accordance with section 282F, and the profile statement is prepared in accordance with section 282G;
- (b) a copy of the prospectus and a copy of the profile statement, each of which has been signed in accordance with subsection (5), 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 may be prescribed by the Authority.

[1/2005]

(5) The copy of a prospectus or profile statement lodged with the Authority shall be signed —

- (a) where the person making the offer is the issuer, 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;
- (b) where the person making the offer is an individual and is not the issuer —
  - (i) by that person; and
  - (ii) if the issuer is controlled by that person, one or more of his related parties, or that person and one or more of his 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; and
- (c) where the person making the offer is an entity and is not the issuer —



- (i) by every director or equivalent person of that entity; and
- (ii) 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.

[1/2005]

(6) A requirement under subsection (5) 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 behalf.

[1/2005]

(7) A requirement under subsection (5) 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 behalf.

[1/2005]

(8) No person shall make any offer of units or derivatives of units in a business trust that has not been formed or does not exist.

[1/2005]

(9) Any person who contravenes subsection (1) or (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 thereof during which the offence continues after conviction.

[1/2005]

(10) The Authority may register a prospectus or 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 (20);
- (b) the Authority gives to the person making the offer 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 (20);
- (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 (20); or
- (d) the person making the offer gives a notice in writing to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.

[1/2005]

[2/2009 wef 29/03/2010]

(11) Where, after a notice of an opportunity to be heard has been given under subsection (10)(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 shall 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 wef 29/03/2010]*

*[1/2005]*

(11A) For the purposes of subsections (10) and (11), the Authority may prescribe the same period and day for all offers or different periods and days for different offers.

(12) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus which has been signed in accordance with subsection (5) and which contains the information required to be stipulated in the prospectus under section 282F, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been lodged with the Authority.

*[1/2005]*

(13) A person making an offer of units or derivatives of units in a business trust 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.

*[1/2005]*

(14) Subject to subsection (15) —

(a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged shall be deemed, for the purposes of subsection (10), to have been lodged when such amendment was lodged; and

(b) where any amendment to a profile statement is lodged, the profile statement shall be deemed, for the purposes of subsection (10), to have been lodged when such amendment was lodged.

*[1/2005]*

(15) Where an amendment to a prospectus or profile statement is lodged with the consent of the Authority, the prospectus or profile statement as amended shall be deemed, for the purposes of subsection (10), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

*[1/2005]*

(16) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.

[1/2005]

(17) 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 shall 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.

[1/2005]

(18) The Authority shall 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 282F;

(c) the copy of the prospectus that is lodged with the Authority is not signed in accordance with subsection (5);

(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 282I, or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(f) any written consent of an issue manager to the issue of the prospectus required under section 282J(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;

(g) any written consent of an underwriter to the issue of the prospectus required under section 282J(2), or a copy

thereof which is verified as prescribed, is not lodged with the Authority; or

- (h) the Authority is of the opinion that it is not in the public interest to do so.

[1/2005]

(19) The Authority shall 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 under section 282G 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 (5);
- (d) any written consent of an expert to the issue of the profile statement required under section 282I, or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (e) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;
- (f) the prospectus has not been registered by the Authority;
- (g) any written consent of an issue manager to the issue of the profile statement required under section 282J(1), or a copy thereof which is verified as prescribed, is not lodged with the Authority;
- (h) any written consent of an underwriter to the issue of the profile statement required under section 282J(2), or a copy thereof which is verified as prescribed, is not lodged with the Authority; or
- (i) the Authority is of the opinion that it is not in the public interest to do so.

[1/2005]

(20) The Authority shall not refuse to register a prospectus under subsection (18) or a profile statement under subsection (19) 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, 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; or
- (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 in relation to or in respect of the trust property of the business trust.

[1/2005]

(21) Any person making an offer may, within 30 days after he is notified that the Authority has refused to register a prospectus or profile statement to which his offer relates under subsection (18) or (19), appeal to the Minister whose decision shall be final.

[1/2005]

(22) 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 or derivatives of units in a business trust is accepted, or units or derivatives of units in a business trust are allotted, issued or sold, before a prospectus and, where applicable, profile statement, where applicable, in respect of the units or derivatives of units has been registered by the Authority,

the person making the offer and every person who is knowingly a party to —

- (i) the issue, circulation or distribution of the prospectus or profile statement;
- (ii) the acceptance of the application to subscribe for or purchase the units or derivatives of units; or
- (iii) the allotment, issue or sale of the units or derivatives of 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 thereof during which the offence continues after conviction.

[1/2005]

(23) 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.

[1/2005]

(24) For the purposes of subsections (18)(a) and (19)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Lodging supplementary document or replacement document**

**282D.**—(1) If, after a prospectus or profile statement is registered but before the close of the offer of units or derivatives of units in a business trust, 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 282F, or an omission from the profile statement of any information that should have been included in it under section 282G, 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 282F to be included in the prospectus; or
    - (B) section 282G 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 (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.

[1/2005]

(2) At the beginning of a supplementary document, there shall 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.

[1/2005]

(3) At the beginning of a replacement document, there shall 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.

[1/2005]

(4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

[1/2005]

(5) The person making the offer shall take reasonable steps —

- (a) to inform potential investors of the lodgment of any supplementary or replacement document under subsection (1); and
- (b) to make available to them the supplementary document or replacement document.

[1/2005]

(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 shall be 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 shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

[1/2005]

(7) 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 shall be 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 shall be taken to be the replacement profile statement.

[1/2005]

(8) If a supplementary document or replacement document is lodged with the Authority, the offer shall be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.

[1/2005]

(9) 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 units or derivatives of units in a business trust, then —

- (a) where the units or derivatives of units have not been issued to the applicants, the person making the offer —

(i) shall —

(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 notice in writing 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) shall, 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) shall —

(A) treat the applications as withdrawn and cancelled, in which case the applications shall be 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 units or derivatives of units in the business trust; or

(b) where the units or derivatives of units have been issued to the applicants, the person making the offer —

(i) shall —

(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 notice in writing 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 units or derivatives of units in the business trust 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) shall, 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 units or derivatives of units in the business trust which they do not wish to retain title in; or
- (iii) shall —
  - (A) treat the issue of the units or derivatives of units in the business trust as void, in which case the issue shall be 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 units or derivatives of units.

[1/2005]

(10) An applicant who wishes to exercise his option under subsection (9)(a)(i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days from the receipt of such notification, pay to the applicant all moneys paid by him on account of his application for the units or derivatives of units in the business trust.

[1/2005]

(11) An applicant who wishes to exercise his option under subsection (9)(b)(i) or (ii) to return units or derivatives of units in the business trust issued to him shall, 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 units or derivatives of units to that person, whereupon that person shall, 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 units or derivatives of units in the business trust, and the issue of those units or derivatives of units shall be deemed to be void.

[1/2005]

(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 units or derivatives of units in a business trust, then —

(a) where the units or derivatives of units have not been transferred to the applicants, the person making the offer —

(i) shall —

(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 notice in writing 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) shall, 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) shall —
  - (A) treat the applications as withdrawn and cancelled, in which case the applications shall be 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 units or derivatives of units in the business trust; or
- (b) where the units or derivatives of units have been transferred to the applicants, the person making the offer —
  - (i) shall —
    - (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 notice in writing 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 units or derivatives of units in the business trust 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) shall, 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 units or derivatives of units in the business trust which they do not wish to retain title in; or
- (iii) shall treat the sale of the units or derivatives of units in the business trust as void, in which case the sale shall be deemed void, and shall —
  - (A) if documents purporting to evidence title to the units or derivatives of units (referred to in this paragraph as 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 the 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 units or derivatives of units; 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 units or derivatives of units.

[1/2005]

(13) An applicant who wishes to exercise his option under subsection (12)(a)(i) or (ii) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the person making the offer of this, whereupon that person shall, within 7 days of the receipt of such notification, pay to him all moneys paid by him on account of his application for the units or derivatives of units in the business trust.

[1/2005]

(14) An applicant who wishes to exercise his option under subsection (12)(b)(i) or (ii) to return units or derivatives of units in the business trust sold to him shall, 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 units or derivatives of units to the person making the offer, whereupon that person shall, within 7 days from the receipt of such notification and documents, if any, pay to the applicant all moneys paid by him for the units or derivatives of units and the sale of those units or derivatives of units shall be deemed to be void.

[1/2005]

(15) Any person who contravenes subsection (9) 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 thereof during which the offence continues after conviction.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]



(17) For the purposes of subsection (1)(a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Stop order for prospectus and profile statement**

**282E.**—(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 282F;
- (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 an order in writing (referred to in this section as a stop order) served on the person making the offer of units or derivatives of units in a business trust to which the prospectus relates, direct that no or no further units or derivatives of units in the business trust be allotted, issued or sold.

[1/2005]

(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 282G;
- (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 an order in writing (referred to in this section as a stop order) served on the person making the offer of the units or

derivatives of units in a business trust to which the profile statement relates, direct that no or no further units or derivatives of units in the business trust allotted, issued or sold.

[1/2005]

(3) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the units or derivatives of units in a business trust to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on a securities exchange and trading in them has commenced.

[1/2005]

(4) The Authority shall 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, 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 any property of the person making the offer (being an entity), the issuer, the trustee-manager of the business trust or, in relation to or in respect of the trust property of the business trust.

[1/2005]

(5) Where applications to subscribe for units or derivatives of units in a business trust to which the prospectus or profile statement relates have been made prior to the stop order, then —

- (a) where the units or derivatives of units have not been issued to the applicants —
  - (i) the applications shall be deemed to have been withdrawn and cancelled; and

(ii) the person making the offer shall, 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 units or derivatives of units;  
or

(b) where the units or derivatives of units have been issued to the applicants —

(i) the issue of the units or derivatives of units shall be deemed to be void; and

(ii) the person making the offer shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the units or derivatives of units.

[1/2005]

(6) Where applications to purchase units or derivatives of units in a business trust to which the prospectus or profile statement relates have been made prior to the stop order, then —

(a) where the units or derivatives of units have not been transferred to the applicants —

(i) the applications shall be deemed to have been withdrawn and cancelled; and

(ii) the person making the offer shall, 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 units or derivatives of units;  
or

(b) where the units or derivatives of units have been transferred to the applicants, the sale shall be deemed to be void, and the person making the offer shall —

(i) if documents purporting to evidence title to the units or derivatives of units 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 units or derivatives of units; 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 units or derivatives of units.

[1/2005]

(7) 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 units or derivatives of units in a business trust to which the prospectus or profile statement relates be allotted, issued or sold.

[1/2005]

(8) An interim stop order shall, unless revoked by the Authority, be 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.

[1/2005]

(9) Subsections (5) and (6) shall not apply where only an interim stop order has been served.

[1/2005]

(10) Any person who fails to comply with a stop order served under subsection (1) or (2) 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 thereof during which the offence continues after conviction.

[1/2005]

(11) Any person who contravenes subsection (5) or (6) 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 thereof during which the offence continues after conviction.

[1/2005]

(12) For the purposes of subsections (1)(a) and (2)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Contents of prospectus**

**282F.**—(1) A prospectus for an offer of units or derivatives of units in a business trust shall 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.

[1/2005]

(2) The prospectus shall, 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.

[1/2005]

- (3) The matters referred to in subsection (1)(a) shall relate to —
  - (a) the rights and liabilities attaching to the units or derivatives of units in the business trust;
  - (b) where the person making the offer of units or derivatives of units in the business trust is the trustee-manager of the business trust or the trustee-manager of the business trust 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 his related parties,the assets and liabilities, profits and losses and financial position and performance of the business trust and of the trustee-manager, and the prospects of the business trust;
  - (c) where derivatives of units in the business trust are issued by an entity other than the trustee-manager of the business trust and the person making the offer is that entity or that 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 his related parties,the assets and liabilities, profits and losses, financial position and performance, and prospects of that entity; and
  - (d) in the case of an offer of derivatives of units in the business trust, where the person making the offer, or an entity which 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 his related parties,

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, 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.

[1/2005]

(4) In deciding what information shall be included under subsection (1)(a), regard shall be had to —

- (a) the nature of the units or derivatives of units in the business trust and the nature of the business trust 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.

[1/2005]

(5) For the purposes of subsection (2)(b), a person's knowledge is relevant only if he is one of the following persons:

- (a) the person making the offer;
- (b) if the person making the offer is an entity, a director or equivalent person of the entity;
- (c) the issuer;
- (d) a director or equivalent person, or a proposed director or equivalent person, of the issuer;
- (e) a person named in the prospectus with his consent as an underwriter to the issue or sale;

- (f) a person named in the prospectus as a stockbroker to the issue or sale if he participates in any way in the preparation of the prospectus;
- (g) a person named in the prospectus with his 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;
- (h) a person named in the prospectus with his consent as having performed a particular professional or advisory function.

[1/2005]

(6) A condition requiring or binding an applicant for units or derivatives of units in a business trust to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

[1/2005]

(7) This section does not affect any liability that a person has under any other law.

[1/2005]

(8) In subsection (3)(b), “assets and liabilities, profits and losses, financial position and performance, and prospects”, in relation to a business trust, means —

- (a) 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; and
- (b) 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.

[1/2005]



**Contents of profile statement**

**282G.**—(1) A profile statement for an offer of units or derivatives of units in a business trust shall contain —

- (a) the following particulars:
  - (i) identification of the business trust, the trustee-manager of the business trust, the person making the offer and the issuer;
  - (ii) identification of the persons signing the profile statement;
  - (iii) the nature of the units or derivatives of units;
  - (iv) the nature of the risks involved in investing in the units or derivatives of units; and
  - (v) details of all amounts payable in respect of the units or derivatives of units (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 282C(5) who have signed the profile statement are satisfied that the profile statement contains a fair summary of the key information in the prospectus.

[1/2005]

(2) A profile statement shall 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.

[1/2005]

(3) For the purposes of subsection (2)(a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Exemption from requirements as to form or content of prospectus or profile statement**

**282H.**—(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 may be determined by the Authority.

[1/2005]

(2) The Authority shall 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 the exemption has been applied for were dispensed with.

[1/2005]

(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 may be determined by the Authority.

[1/2005]

(4) 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 thereof during which the offence continues after conviction.

[1/2005]

**Expert's consent to issue of prospectus or profile statement containing statement by him**

**282I.**—(1) Where an offer of units or derivatives of units in a business trust 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 shall 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 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 consent.

[1/2005]

(2) Every person making the offer shall 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.

[1/2005]

(3) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the units or derivatives of units in the business trust 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 (2) for a period of at least 6 months after the registration of the prospectus or profile statement.

[1/2005]

(4) 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 thereof during which the offence continues after conviction.

[1/2005]

(5) 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 may be determined by the Authority.

[1/2005]

(6) Any person who contravenes any of the conditions or restrictions 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 thereof during which the offence continues after conviction.

[1/2005]

### **Consent of issue manager and underwriter to being named in prospectus or profile statement**

**282J.**—(1) Where an offer of units or derivatives of units in a business trust 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 shall 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 his 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 his consent.

[1/2005]

(2) Where an offer of units or derivatives of units in a business trust 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 shall 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 his 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(4) Every person making the offer shall 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.

[1/2005]

(5) Every issuer shall keep, and make available for inspection by its members and creditors and persons who have subscribed for or purchased the units or derivatives of units in the business trust 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.

[1/2005]

### **Duration of validity of prospectus and profile statement**

**282K.**—(1) No person shall make an offer of units or derivatives of units in a business trust, or allot, issue or sell any units or derivatives of units in a business trust, on the basis of a prospectus or profile

statement after the expiration of a period of 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.

[1/2005]

(2) In a case where an entity makes an offer of units or derivatives of units in a business trust or where the units or derivatives of units in a business trust being offered are those issued by an entity or a proposed entity, no officer or equivalent person or promoter of the entity or proposed entity shall authorise or permit —

- (a) the offer of those units or derivatives of units; or
- (b) the allotment, issue or sale of those units or derivatives of units,

on the basis of a prospectus or profile statement after the expiration of a period of 6 months from the date of registration by the Authority of the prospectus in relation to such offer, allotment, issue or sale.

[1/2005]

(3) If default is made in complying with subsection (1) or (2), the person and, in the case of an entity or 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 thereof during which the offence continues after conviction.

[1/2005]

(4) An allotment, an issue or a sale of units or derivatives of units in a business trust that is made in contravention of subsection (1) or (2) shall not, by reason only of that fact, be voidable or void.

[1/2005]

### **Restrictions on advertisements, etc.**

**282L.**—(1) If a prospectus is required for an offer or intended offer of units or derivatives of units in a business trust, a person shall 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 units or derivatives of units,

unless the advertisement or publication is authorised by this section.

[1/2005]

(2) In determining whether a statement —

- (a) indirectly refers to an offer or intended offer of units or derivatives of units in a business trust; or
- (b) is reasonably likely to induce persons to subscribe for or purchase units or derivatives of units in a business trust,

regard shall be had to whether the statement —

(i) forms part of —

(A) the normal advertising 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; or

(B) 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;

- (ii) communicates information that materially deals with the affairs of the business trust or the entity; and
- (iii) 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.

[1/2005]

(3) Notwithstanding 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 282Z(3) or persons to whom an offer referred to in section 282Z(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 shall not circulate it to any other person; and
  - (iii) a statement in bold lettering that no offer or agreement shall be made on the basis of the preliminary document to purchase or subscribe for any units or derivatives of units in the business trust 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 units or derivatives of units in the business trust 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.

[1/2005]

(4) Notwithstanding subsection (6), a person does not contravene subsection (1) by presenting 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 282Z(3) or persons to whom an offer referred to in



section 282Z(2) is to be made before a prospectus or profile statement is registered by the Authority.

[1/2005]

(5) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 282C without contravening subsection (1).

[1/2005]

(6) 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 units or derivatives of units in the business trust, the person making the offer, the issuer, the business trust and the trustee-manager of the business trust;
- (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 or derivatives of units in the business trust will need to make an application in the manner set out in the prospectus or profile statement; and
- (d) a statement of how to obtain, or arrange to receive, a copy of the prospectus or profile statement.

[1/2005]

(7) To satisfy subsection (6), the advertisement or publication shall 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).

[1/2005]

(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 units or derivatives of units in the business trust is available for collection at the times and places specified in the statement;

- (b) it includes a statement that anyone wishing to acquire the units or derivatives of units in the business trust will need to make an application in the manner set out in the prospectus or profile statement; and
- (c) it does not contain any information that is not included in the prospectus or profile statement.

[1/2005]

(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 a securities exchange, futures exchange or overseas securities exchange made by any person;

[2/2009 wef 29/07/2009]

- (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 or any entity, a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, 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 or the business trust whose units or derivatives of units are the subject of the offer or intended offer that is published by the person making the offer, the issuer or the trustee-manager of the business trust, which —
  - (i) does not contain information that materially affects the affairs of the issuer or the business trust 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 referred to 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 or the trustee-manager of the business trust 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);
- (f) is a report about the units or derivatives of units in a business trust which are the subject of the offer or intended offer, published by someone who is not —
  - (i) the person making the offer, the issuer or the trustee-manager of the business trust;
  - (ii) a director or equivalent person of the person making the offer, the issuer or the trustee-manager of the business trust;
  - (iii) a person who has an interest in the success of the issue or sale of the units or derivatives of units in the business trust; or
  - (iv) a person acting at the instigation of, or by arrangement with, any person referred to 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  
*[2/2009 wef 01/10/2012]*
- (h) is a publication made by the person making the offer, the issuer or 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 first-mentioned publication does not contain any material information that is not included in the prospectus.

*[1/2005]*

- (10) A person does not contravene subsection (1) if —
- (a) he 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) he did not know and had no reason to suspect that its publication would constitute a contravention of subsection (1).

*[1/2005]*

(11) Subsection (9)(e) and (f) shall not apply to an advertisement or a statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

*[1/2005]*

(12) Any person who contravenes subsection (1) or who knowingly authorised or permitted the publication or dissemination 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 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 thereof during which the offence continues after conviction.

[1/2005]

(13) This section does not affect any liability that a person has under any other law.

[1/2005]

(14) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as may be determined by the Authority.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(16) For the purposes of this section, any reference to publishing a statement shall be construed as including a reference to making a statement, whether oral or written, which is reasonably likely to be published.

[1/2005]

(17) For the purposes of subsections (1) and (2), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

(18) For the purposes of subsection (2)(ii), the reference to affairs of the business trust or the entity shall —

- (a) in the case of the business trust, be construed to refer to such matters as may be prescribed by the Authority;

- (b) in the case where the entity is a corporation, be construed as including a reference to the matters referred to in section 2(2); and
- (c) in the case where the entity is not a corporation, be construed to refer to such matters as may be prescribed by the Authority.

[1/2005]

(19) For the purposes of subsection (9)(c)(i), the reference to affairs of the issuer or the business trust shall —

- (a) in the case where the issuer is a corporation, be construed as including a reference to the matters referred to in section 2(2);
- (b) in the case where the issuer is not a corporation, be construed to refer to such matters as may be prescribed by the Authority; and
- (c) in the case of the business trust, be construed to refer to such matters as may be prescribed by the Authority.

[1/2005]

### **Persons liable on prospectus or profile statement to inform person making offer about certain deficiencies**

**282M.**—(1) A person referred to in section 282O(3) (other than paragraph (a)) shall notify in writing the person making the offer of units or derivatives of units in a business trust, as soon as practicable, if he 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 282F or there is an omission to state any information required to be included in the profile statement under section 282G, 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 282F, or required to be included in the profile statement under section 282G, 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.

[1/2005]

(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.

[1/2005]

(3) For the purposes of subsection (1)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Criminal liability for false or misleading statements**

**282N.**—(1) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 282ZC, 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 units or derivatives of units;
- (b) there is an omission to state any information required to be included in the prospectus under section 282F or there is an omission to state any information required to be included in the profile statement under section 282G, 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 282F, or required to be included in the profile statement under section 282G, 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 thereof during which the offence continues after conviction.

[1/2005]

(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.

[1/2005]

(3) A person shall not be taken to have contravened 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.

[1/2005]

- (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 his 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 units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or profile statement, if —
- (i) he 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, he fails to take such remedial action as is appropriate in the circumstances without delay; or
  - (iii) he 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 units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or profile statement, if —
- (i) he 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, he fails to take such remedial action as is appropriate in the circumstances without delay; or
  - (iii) he 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 his consent as having made —
- (i) the statement that is false or misleading, if he intentionally or recklessly makes that statement; or
  - (ii) a statement on which the false or misleading statement is based, if he knows that the second-mentioned statement is false or misleading and fails to take immediate steps to withdraw his 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.

[1/2005]

(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 282D; 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, he 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.

[1/2005]

(6) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Civil liability for false or misleading statements**

**282O.**—(1) Where an offer of units or derivatives of units in a business trust is made in or accompanied by a prospectus or profile statement, or, in the case of an offer referred to in section 282ZC, 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 units or derivatives of units;
- (b) there is an omission to state any information required to be included in the prospectus under section 282F or there is an omission to state any information required to be included in the profile statement under section 282G, 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 282F, or required to be included in the profile statement under section 282G, 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) shall be 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.

[1/2005]

(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.

[1/2005]

- (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 his 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 units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or the profile statement;
- (e) an underwriter (but not a sub-underwriter) to the issue or sale of the units or derivatives of units in the business trust who is, and who has consented to be, named in the prospectus or the profile statement;
- (f) a person named in the prospectus or the profile statement with his 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
- (g) 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.

[1/2005]

(4) A person who acquires units or derivatives of units in a business trust as a result of an offer that was made in or accompanied by a profile statement is taken to have acquired the units or derivatives of units in reliance on both the profile statement and the prospectus for the offer.

[1/2005]

(5) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

(6) No action under subsection (1) shall be commenced after the expiration of 6 years from the date on which the cause of action arose.

[1/2005]

(7) This section shall not affect any liability that a person has under any other law.

[1/2005]

## Defences

**282P.**—(1) A person referred to in section 282N(4)(a), (b) or (c) is not liable under section 282N(1), and a person referred to in section 282O(3) is not liable under section 282O(1), only because of a false or misleading statement in a prospectus or a profile statement if the person proves that he —

- (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.

[1/2005]

(2) A person referred to in section 282N(4)(a), (b) or (c) is not liable under section 282N(1), and a person referred to in section 282O(3) is not liable under section 282O(1), only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person proves that he —

- (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.

[1/2005]

(3) A person is not liable under section 282N(1) or 282O(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 he placed reasonable reliance on information given to him by —

(a) if the person is an entity, someone other than —

(i) a director or 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.

[1/2005]

(4) For the purposes of subsection (3), a person is not the agent of an entity or individual merely because he performs a particular professional or advisory function for the entity or individual.

[1/2005]

(5) A person who is named in a prospectus or a profile statement as —

(a) a proposed director or 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 282N(1) or 282O(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 he publicly withdrew his consent to being named in the prospectus or the profile statement in that way.

[1/2005]

(6) A person is not liable under section 282N(1) or 282O(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 he was not aware of the matter.

[1/2005]

(7) For the purposes of this section, any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

**Document containing offer of units or derivatives of units for sale deemed prospectus**

**282Q.**—(1) Subsection (2) applies where —

- (a) an entity allots or agrees to allot to any person any units or derivatives of units in a business trust with a view to all or any of them being subsequently offered for sale to another person; and
- (b) such offer (referred to in this section as a subsequent offer) does not qualify for an exemption under Subdivision (3) of this Division (other than section 282ZC).

[1/2005]

(2) Any document by which the subsequent offer is made shall for all purposes be deemed to be a prospectus issued by the entity, and the entity shall for all purposes be 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, shall apply and have effect accordingly as if —

- (a) an offer of units or derivatives of units in the business trust has been made; and
- (b) persons accepting the subsequent offer in respect of any units or derivatives of units in the business trust were subscribers therefor,

but without prejudice to the liability, if any, of the persons making the subsequent offer, in respect of statements or non-disclosures in the document or otherwise.

[1/2005]

(3) For the purposes of this Act, it shall, unless the contrary is proved, be sufficient evidence that an allotment of, or an agreement to allot, units or derivatives of units in a business trust was made with a view to the units or derivatives of units being subsequently offered for sale if it is shown —

- (a) that an offer of the units or derivatives of units 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 units or derivatives of units had not been so received.

[1/2005]

(4) The requirements of this Division as to prospectuses shall have effect as though the persons making the subsequent offer were persons named in the prospectus as directors or equivalent persons of the entity.

[1/2005]

(5) In addition to complying with the other requirements of this Division, the document making the subsequent offer shall state —

- (a) the net amount of the consideration received or to be received by the entity in respect of the units or derivatives of units in the business trust being offered; and
- (b) the place and time at which a copy of the contract under which the units or derivatives of units in the business trust have been or are to be allotted may be inspected.

[1/2005]

### **Application and moneys to be held in trust in separate bank account until allotment**

**282R.**—(1) All application and other moneys paid prior to allotment by any applicant on account of units or derivatives of units in a business trust offered to him shall, until the allotment of the units or derivatives of units in the business trust, be held by the person making the offer of the units or derivatives of units 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 units or derivatives of units.

[1/2005]

(2) There shall be 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

**Allotment of units or derivatives of units where prospectus indicates application to list on securities exchange**

**282S.**—(1) Where a prospectus states or implies that application has been or will be made for permission for the units or derivatives of units in a business trust offered thereby to be listed for quotation on any securities exchange, and —

- (a) the permission is not applied for in the form required by the securities 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 securities exchange,

then —

- (i) any allotment whenever made of units or derivatives of units made on an application in pursuance of the prospectus shall, subject to subsection (3), be void; and
- (ii) any person who continues to allot such units or derivatives of 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 thereof during which the offence continues after conviction.

[1/2005]

(2) Where, the permission has not been applied for, or has not been granted as mentioned under subsection (1), the person making the offer shall, subject to subsection (3), immediately repay without

interest all moneys received from applicants in pursuance of 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) he shall be 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 shall be jointly and severally liable to repay those moneys with interest at the rate of 10% per annum from the expiration of such 14 days.

[1/2005]

(3) Where in relation to any units or derivatives of units in a business trust —

(a) permission is not applied for as specified in subsection (1)(a); or

(b) permission is not granted as specified in subsection (1)(b),

the Authority may, on the application of the issuer made before any of the units or derivatives of units is purported to be allotted, exempt the allotment of the units or derivatives of units from the provisions of this section, and the Authority shall give notice of such exemption in the *Gazette*.

[1/2005]

(4) A director or equivalent person shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

[1/2005]

(5) Any condition requiring or binding any applicant for units or derivatives of units in a business trust to waive compliance with any requirement of this section or purporting to do so shall be void.

[1/2005]

(6) Without limiting the application of any of its provisions, this section shall have effect —

(a) in relation to any units or derivatives of units in a business trust agreed to be taken by a person underwriting an offer

thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and

- (b) in relation to a prospectus offering units or derivatives of units in a business trust for sale as if a reference to sale were substituted for a reference to allotment.

[1/2005]

(7) All moneys received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the person making the offer may become liable to repay it under subsection (2).

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(9) Where the securities exchange has within the time specified in subsection (1)(b) granted permission subject to compliance with any requirements specified by the securities exchange, permission shall be deemed to have been granted by the securities exchange if the directors or equivalent persons of the issuer have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(11) A person shall not issue a prospectus inviting persons to subscribe for units or derivatives of units in a business trust if it includes —

- (a) a false or misleading statement that permission has been granted for those units or derivatives of units to be listed for quotation on, dealt in or quoted on any securities 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 units or derivatives of units, on any securities exchange, or to any requirement of a securities 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 securities exchange within 3 days from the date of the issue of the prospectus; or
  - (ii) that statement has been approved by the Authority for inclusion in the prospectus.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(13) Where a prospectus contains a statement to the effect that the trust deed of a business trust or 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 securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the units or derivatives of units in the business trust to which the prospectus relates to be listed for quotation on the securities exchange.

[1/2005]

**Prohibition of allotment unless minimum subscription received**

**282T.**—(1) No allotment shall be made of any units or derivatives of units in a business trust unless —

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the units or derivatives of units so subscribed has been received by the trustee-manager of the business trust,

but if a cheque for the sum payable has been received by the trustee-manager, the sum shall be deemed not to have been received by the trustee-manager until the cheque is paid by the bank on which it is drawn.

[1/2005]

(2) The minimum subscription shall —

- (a) be calculated based on the price at which each unit or derivative of a unit is offered or will be offered; and
- (b) be reckoned exclusively of any amount payable otherwise than in cash.

[1/2005]

(3) The amount payable on application for each unit or derivative of a unit offered shall not be less than 5% of the price at which the unit or derivative of a unit is or will be offered.

[1/2005]

(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 units or derivatives of units in the business trust shall be immediately repaid to them without interest.

[1/2005]

(5) If any money referred to in subsection (4) is not repaid within 5 months after the issue of the prospectus, the directors of the trustee-manager of the business trust shall be 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; but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

[1/2005]

(6) An allotment made by the trustee-manager of a business trust of any units or derivatives of units in the business trust to an applicant in contravention of this section shall be voidable at the option of the applicant, whose option may be exercised by written notice served on the trustee-manager of the business trust within one month after the date of the allotment and not later, and the allotment shall be so voidable notwithstanding that the business trust is in the course of being wound up.

[1/2005]

(7) The trustee-manager of a business trust which contravenes any of the provisions of this section, and every director of a trustee-manager 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 to pay into the trust property of the business trust and compensate the allottee respectively for any loss, damages or costs which the business trust (represented by any diminishment in value to the trust property of the business trust) or the allottee has sustained or incurred thereby.

[1/2005]

(8) No proceedings for the recovery of any compensation under subsection (7) shall be commenced after the expiration of 2 years from the date of the allotment.

[1/2005]

(9) Any condition requiring or binding any applicant for units or derivatives of units in a business trust to waive compliance with any requirement of this section shall be void.

[1/2005]

*Subdivision (2A) — Recognised business trusts*

**Power of Authority to recognise business trusts constituted outside Singapore**

**282TA.**—(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.

(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 (Cap. 31A) in the case of registered business trusts;
- (b) the business trust satisfies such criteria as may be prescribed by the Authority; 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 the Authority.

(3) Without prejudice to 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) Without prejudice to 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.

(5) The Authority shall 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 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 any property of the person making the offer (being an entity), the issuer or the trustee-manager of the business trust, or in relation to or in respect of the trust property of the business trust.

(6) Any person making an application under subsection (1) may, within 30 days after he is notified that the Authority has refused to recognise that business trust constituted outside Singapore under subsection (1), appeal to the Minister whose decision shall be final.

(7) An application made under subsection (1) shall 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 business trust that is recognised under subsection (1).

(9) While a business trust remains a recognised business trust, a person making an offer of, or an issuer of, units or derivatives of units in the trust, or the trustee-manager of the trust shall ensure that the criteria prescribed by the Authority in accordance with subsection (2)(b) and (c) which are applicable to him continue to be satisfied.

(10) The trustee-manager of a recognised business trust shall furnish such information or record regarding the business trust as the Authority may, at any time, require for the proper administration of this Act.

(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 thereof during which the offence continues after conviction.

*[2/2009 wef 01/10/2012]*

### **Power of Authority to impose conditions or restrictions**

**282TB.**—(1) The Authority may recognise a business trust under section 282TA(1) subject to such conditions or restrictions as it thinks fit to impose for the purpose of protection of investors, and the trustee-manager of the trust and a person making an offer of, or an

issuer of, units or derivatives of units in the trust shall comply with the conditions or restrictions applicable to him.

(2) The Authority may, at any time, by notice in writing to any of the persons referred to in subsection (1), vary any condition or restriction or impose such further condition or restriction as the Authority may think fit.

(3) Any person who contravenes any condition or restriction applicable to him under subsection (1) or (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 thereof during which the offence continues after conviction.

*[2/2009 wef 01/10/2012]*

### **Revocation, suspension or withdrawal of recognition**

**282TC.**—(1) The Authority may revoke the recognition of a recognised business trust granted under section 282TA(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 282TA(9) or (10) or a condition or restriction referred to in section 282TB.

(2) Where the Authority revokes the recognition of a recognised business trust under subsection (1), the Authority may issue such directions as it deems fit to a person making an offer of, or the issuer

of, units or derivatives of units in the trust, or the trustee-manager of the trust, including a direction that he provides the holders of the units or derivatives of units with an option to redeem or sell back to him their units or derivatives of units, as the case may be, on such terms as the Authority may approve; and the person to whom the directions are issued shall comply with them.

(3) In determining whether to issue a direction under subsection (2), the Authority shall consider —

- (a) whether the trustee-manager is able to liquidate the property of the 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 trust;
  - (ii) the penalties, if any, payable for liquidating the property; and
  - (iii) in a case where the units of the trust are also listed for quotation or quoted on an overseas securities exchange, the potential impact which the liquidation may have on unitholders in the country or territory where they are listed; and
- (b) where the units or derivatives of units of the trust are listed for quotation on the official list of a securities 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 securities exchange.

(4) A person who without reasonable excuse contravenes any of the directions issued by the Authority to him 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 thereof during which the offence continues after conviction.

(5) Notwithstanding 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.

(6) 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 (5), it shall 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 282TA(1).

(7) Subject to subsection (8), the Authority may, upon an application in writing 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 282TA(1), in such form and manner as may be prescribed, withdraw the recognition of that recognised business trust.

(8) The Authority may refuse to withdraw the recognition of a recognised business trust under subsection (7) 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.

(9) The Authority shall not —

- (a) revoke the recognition of a recognised business trust under subsection (1);
- (b) impose a direction under subsection (2);
- (c) suspend the recognition of a recognised business trust under subsection (5); or
- (d) refuse the withdrawal of the recognition of a recognised business trust under subsection (8),

without giving the person referred to in subsection (2), (6) or (7), as the case may be, an opportunity to be heard, except that 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:

- (i) 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;
- (ii) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) 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, or in relation to the trust property of the recognised business trust.

(10) The person referred to in subsection (2), (6) or (7), as the case may be, may, within 30 days after he is notified that the Authority —

- (a) has revoked the recognition of that recognised business trust under subsection (1);
- (b) has imposed a direction on him under subsection (2);
- (c) has suspended the recognition of that recognised business trust under subsection (5); or
- (d) has refused to withdraw the recognition of that recognised business trust under subsection (8),

appeal to the Minister whose decision shall be final.

(11) Where the Authority revokes a recognition under subsection (1), suspends a recognition under subsection (5) or withdraws a recognition under subsection (8), 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.

[2/2009 wef 01/10/2012]

*Subdivision (3) — Exemptions*

**Issue or transfer of units or derivatives of units for no consideration**

**282U.**—(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units in a business trust if no consideration is or will be given for the issue or transfer of the units.

[1/2005]

(2) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of derivatives of units in a business trust if —

- (a) no consideration is or will be given for the issue or transfer of the derivatives of units; and
- (b) no consideration is or will be given for the units in the business trust on the exercise or conversion of the derivatives of units.

[1/2005]

**Small offers**

**282V.**—(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to personal offers of units or derivatives of units in 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 may be prescribed by the Authority in substitution for the amount specified in sub-paragraph (i);

- (b) in respect of each offer, the person making the offer —
- (i) gives the person to whom he makes the offer —
    - (A) in the case where the business trust is not registered under the Business Trusts Act (Cap. 31A), the following statement in writing:

“This offer is made in reliance on the exemption under section 282V(1) of the Securities and Futures Act. 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.”; and
    - (B) in the case where the business trust is registered under the Business Trusts Act, the following statement in writing:

“This offer is made in reliance on the exemption under section 282V(1) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”; and
  - (ii) gives the person to whom he makes the offer a notification in writing that the units or derivatives of units to which the offer (referred to in this sub-paragraph as the initial offer) relates shall not be subsequently sold to any person, unless the offer resulting in such subsequent sale is made —
    - (A) in compliance with Subdivision (2) 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 or derivatives of 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;
- [2/2009 wef 29/07/2009]*
- (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 securities;
- (ii) an exempt person in respect of dealing in securities;  
or
- (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 securities, or who is exempted therefrom in respect of such dealing; and
- [2/2009 wef 29/07/2009]*  
*[1/2005]*
- (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 282K;  
or
- (ii) the person making the offer has before making the offer informed the Authority by notice in writing of its intent to make the offer in reliance on the exemption under this subsection.

(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 he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

[1/2005]

(3) For the purposes of subsection (1), a personal offer of units or derivatives of units in a business trust 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 —
    - (A) the person making the offer;
    - (B) the holder of a capital markets services licence to deal in securities;
    - (C) an exempt person in respect of dealing in securities;
    - (D) a person licensed under the Financial Advisers Act (Cap. 110) 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; or
    - (F) 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 securities or the

provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind.

[1/2005]

(4) In determining the amount raised by an offer, the following shall be included:

- (a) the amount payable for the units or derivatives of units in a business trust at the time they are allotted, issued or sold;
- (b) if the units or derivatives of units in a business trust are issued partly-paid, any amount payable at a future time if a call is made;
- (c) if the units or derivatives of units in a business trust carry a right (by whatever name called) to be converted into other units or derivatives of units in the business trust or to acquire other units or derivatives of units in the business trust, any amount payable on the exercise of the right to convert them into, or to acquire, other units or derivatives of units.

[1/2005]

(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 or derivatives of units in a business trust issued by the same entity; or
- (b) by that person or another person from any offer of securities which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1), section 272A(1) or 302B(1) shall be included.

[1/2005]

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(7) For the purpose of this section, an offer of units or derivatives of units in a business trust made by a person acting as an agent of another person shall be treated as an offer made by that other person.

[1/2005]

(8) Where units or derivatives of units in a business trust acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the units or derivatives of units to another person, Subdivision (2) of this Division shall apply to the offer from the first-mentioned 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 or derivatives of 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 that indicate to —
      - (CA) the person making the initial offer;

- (CB) the holder of a capital markets services licence to deal in securities;
- (CC) an exempt person in respect of dealing in securities;
- (CD) a person licensed under the Financial Advisers Act (Cap. 110) 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 (Cap. 110); or
- (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 securities or the provision of financial advisory services concerning investment products, or who is exempted therefrom in respect of such dealing or the provision of such services,

that he is interested in offers of that kind;

(iii) in respect of which the first-mentioned person has given the second-mentioned person —

(A) the following statement in writing —

(AA) in the case where the business trust is not registered under the Business Trusts Act (Cap. 31A) —

“This offer is made in reliance on the exemption under section 282V(8)(c) of the Securities and Futures Act. 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.”; and

(AB) in the case where the business trust is registered under the Business Trusts Act —

“This offer is made in reliance on the exemption under section 282V(8)(c) of the Securities and Futures Act. It is not made in or accompanied by a prospectus that is registered by the Monetary Authority of Singapore.”; and

(B) a notification in writing that the units or derivatives of units being offered shall not be subsequently sold to any person unless the offer resulting in such subsequent sale is made —

(BA) in compliance with Subdivision (2) 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 or derivatives of 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 —

- (A) the holder of a capital markets services licence to deal in securities;
- (B) an exempt person in respect of dealing in securities; or
- (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 securities, or who is exempted therefrom in respect of such dealing.

[1/2005]

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(c)(iii).

[1/2005]

(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 or derivatives of units in a business trust, but does not include —

- (i) a document —
  - (A) purporting to describe the units or derivatives of units being offered, or the business and affairs of the person making the offer, the issuer, the trustee of the business trust or the business trust; and
  - (B) 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 or derivatives of units being offered;

- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange, which is made by any person; or

[2/2009 wef 29/07/2009]

- (iii) 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 trustee of the business trust or any entity, a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, or a presentation of oral or written material on matters so contained in the notice or report at the general meeting.

[1/2005]

(11) In subsection (10)(i)(A), the reference to the affairs of the person making the offer, the issuer, the trustee of the business trust or the business trust shall —

- (a) in the case where the person making the offer, the issuer or the trustee of the business trust is a corporation, be construed as including a reference to the matters referred to in section 2(2);
- (b) in the case where the person making the offer, the issuer or the trustee of the business trust is not a corporation, be construed as referring to such matters as may be prescribed by the Authority; and
- (c) in the case of the business trust, be construed as referring to such matters as may be prescribed by the Authority.

[1/2005]

### **Private placement**

**282W.**—(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to offers of units or derivatives of units in 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;
- [2/2009 wef 29/07/2009]*
- (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 securities;
  - (ii) an exempt person in respect of dealing in securities; or
  - (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 securities, or who is exempted therefrom in respect of such dealing; and
- [2/2009 wef 29/07/2009]*  
*[1/2005]*
- (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 282K; or
  - (ii) the person making the offer has before making the offer —
    - (A) informed the Authority by notice in writing 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 wef 29/07/2009]*



(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(a).

[1/2005]

(3) In determining whether offers of units or derivatives of units in a business trust 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 or derivatives of units issued by the same entity is made by the first-mentioned person; or
- (b) an offer of securities is made by the first-mentioned 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, section 272B or 302C shall be included.

[1/2005]

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(5) For the purposes of subsection (1) —

- (a) an offer of units or derivatives of units in a business trust to an entity or to a trustee shall be 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 or derivatives of units which are the subject of the offer;
- (b) an offer of units or derivatives of units in a business trust to an entity or to a trustee shall be 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 or derivatives of units which are the subject of the offer;
- (c) an offer of units or derivatives of units in a business trust to 2 or more persons who will own the units or derivatives of

units acquired as joint owners shall be treated as an offer to a single person;

- (d) an offer of units or derivatives of units in a business trust to a person acting on behalf of another person (whether as an agent or otherwise) shall be treated as an offer made to that other person;
- (e) offers of units or derivatives of units in a business trust made by a person as an agent of another person shall be 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 units or derivatives of units in a business trust by virtue of section 4, only the second-mentioned person shall be counted for the purposes of determining whether offers of the units or derivatives of 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 or derivatives of units in a business trust is made to a person in reliance on the exemption under subsection (1) with a view to those units or derivatives of 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 282ZC,both persons shall be counted for the purposes of determining whether offers of the units or derivatives of units are made to no more than the applicable number of persons specified in subsection (1)(a).

[1/2005]

(6) In subsection (1)(b), “advertisement” has the same meaning as in section 282V(10).

[1/2005]

**Offer made under certain circumstances**

**282X.**—(1) Subdivision (2) of this Division (other than subsection (1)(a) of sections 282C and 282Q) shall not apply to an offer of units or derivatives of units in a business trust 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 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 were applicable to it;

- (c) 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 were applicable to it;

- (d) it is an offer of units in a business trust (not being such excluded units in a business trust, or units in such excluded business trust, as may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange;

*[2/2009 wef 29/07/2009]*

- (e) it is an offer of derivatives of units in a business trust (not being such excluded derivatives of units in a business trust,

or derivatives of units in such excluded business trust, as may be prescribed by the Authority) where —

- (i) the derivatives of units have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange; or  
*[2/2009 wef 29/07/2009]*
- (ii) an application has been or will be made for permission for the derivatives of units to be listed for quotation or quoted on a securities exchange and the units have been previously issued and are listed for quotation on a securities exchange or a recognised securities exchange;
- (f) it is an offer of units in a business trust made to any existing unitholder of the business trust or any holder of debentures of the trustee-manager issued in its capacity as trustee-manager of the business trust whose units are listed for quotation on a securities exchange; or
- (g) it is an offer of derivatives of units in a business trust made to any existing unitholder of the business trust or any holder of debentures of the trustee-manager issued in its capacity as trustee-manager of the business trust whose units are listed for quotation on a securities exchange, where such derivatives of units may only be exercised or converted by any existing unitholder or holder of debentures into units of the business trust.

*[1/2005]*

(2) An offer of units or derivatives of units in a business trust does not come within subsection (1)(d) or (e) if —

- (a) the units or derivatives of units being offered are borrowed by the issuer from an existing unitholder or holder of derivatives of units, solely for the purpose of facilitating the offer of units or derivatives of units by the issuer; and
- (b) such borrowing is made under an agreement or arrangement between the issuer and the unitholder or holder which promises the issue or allotment of units or

derivatives of units by the issuer to the unitholder or holder at the same time or shortly after the offer.

[1/2005]

(3) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust if —

- (a) 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;

- (b) 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;

- (c) it is made (whether or not in relation to units or derivatives of units in a business trust that have been previously issued) by the trustee of the business trust to a qualifying

person, where the units or derivatives of units are to be held by or for the benefit of the qualifying person and are the units or derivatives of units of the business trust or the securities of any of its related parties;

- (d) it is an offer to enter into an underwriting agreement relating to units or derivatives of units in a business trust; or
- (e) it is an offer of units or derivatives of units in a business trust —
  - (i) being a business trust which is registered in Singapore or otherwise, whose units or derivatives of units are not listed for quotation on a securities exchange; or
  - (ii) being a business trust which is not registered in Singapore, whose units or derivatives of units are listed for quotation on a securities exchange and such listing is not a primary listing,

that is made to existing unitholders of the business trust or holders of debentures of the trustee issued in its capacity as trustee of the business trust (whether or not it is renounceable in favour of persons other than existing unitholders or holders of debentures).

[1/2005]

(4) An offer of units or derivatives of units in a business trust comes within subsection (3)(c) only if 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 securities;
- (b) an exempt person in respect of dealing in securities; or
- (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 securities, or who is exempted therefrom in respect of such dealings.

[1/2005]

(5) For the purposes of subsection (3)(c), a person is a qualifying person in relation to a business trust if he is a bona fide director or equivalent person, former director or equivalent person, consultant, adviser, employee or former employee of the trustee of the business trust or a related corporation of that trustee (being a corporation), or if he is the spouse, widow, widower or a child, adopted child or step-child below the age of 18, of such director or equivalent person, former director or equivalent person, employee or former employee.

[1/2005]

(6) 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 units or derivatives of units in a business trust 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 units or derivatives of units in a business trust,

then Subdivision (2) of this Division (other than section 282Q) shall not apply to such offer for a period of 6 months from the date of the declaration.

[1/2005]

(7) The Authority may, on making a declaration under subsection (6), impose such conditions or restrictions on the offer as the Authority may determine.

[1/2005]

(8) A declaration made under subsection (6) shall be final.

[1/2005]

(9) Any person who contravenes any of the conditions or restrictions specified in the declaration made under subsection (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 thereof during which the offence continues after conviction.

[1/2005]

(10) In subsection (1)(b) and (c), “corporation” means a corporation that is not a company.

[1/2005]

(11) In subsection (3)(a) and (b), “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 securities exchange.

[1/2005]

### **Offer made to institutional investors**

**282Y.** Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust, whether or not they have been previously issued, made to an institutional investor.

[1/2005]

### **Offer made to accredited investors and certain other persons**

**282Z.—**(1) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust, 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;  
[2/2009 wef 29/07/2009]
- (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 securities;
  - (ii) an exempt person in respect of dealing in securities; or
  - (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 securities, or who is exempted therefrom in respect of such dealing; and

[2/2009 wef 29/07/2009]

[1/2005]

- (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 282K; or
  - (ii) the person making the offer has before making the offer —
    - (A) informed the Authority by notice in writing 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 wef 29/07/2009]

(2) Subdivision (2) of this Division (other than section 282Q) shall not apply to an offer of units or derivatives of units in a business trust to a person who acquires the units or derivatives of units as principal, whether or not the units or derivatives of units have been previously issued, if —

- (a) the offer is on terms that the units or derivatives of 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 securities or other assets;
- (b) the offer is not accompanied by an advertisement making an offer or calling attention to the offer, or intended offer;  
[2/2009 wef 29/07/2009]
- (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 securities;
  - (ii) an exempt person in respect of dealing in securities; or
  - (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 securities, or who is exempted therefrom in respect of such dealing; and
- [2/2009 wef 29/07/2009]*  
*[1/2005]*
- (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 282K; or
  - (ii) the person making the offer has before making the offer —
    - (A) informed the Authority by notice in writing 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 wef 29/07/2009]*
- (3) 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 units or derivatives of units in a business trust, but does not include —

- (i) an information memorandum;
- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange, which is made by any person; or  
*[2/2009 wef 29/07/2009]*
- (iii) 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 trustee of the business trust or any entity, a notice or report of a general meeting or proposed general meeting of the unitholders of the business trust, 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 units or derivatives of units in the business trust being offered; or
  - (ii) the business and affairs of any one or more of the following —
    - (A) the issuer;
    - (B) the person making the offer;
    - (C) the business trust;
    - (D) the trustee of the business trust; 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 or derivatives of units in the business trust 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).

[1/2005]

(4) In the definition of “information memorandum” in subsection (3), the reference to the affairs of the issuer, the person making the offer, the trustee of the business trust or the business trust shall —

- (a) in the case where the issuer, the person making the offer or the trustee of the business trust is a corporation, be construed as including a reference to the matters referred to in section 2(2);
- (b) in the case where the issuer, the person making the offer or the trustee of the business trust is not a corporation, be construed to refer to such matters as may be prescribed by the Authority; and
- (c) in the case of a business trust, be construed as referring to such matters as may be prescribed by the Authority.

[1/2005]

(5) Notwithstanding any requirement in section 99 or any regulation made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires units or derivatives of units in a business trust under section 282Y or this section for his own account shall be considered an exempt person even though he does not comply with that requirement.

[1/2005]

(6) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2)(a).

[1/2005]

### **Offer of securities acquired pursuant to section 282Y or 282Z**

**282ZA.**—(1) Notwithstanding sections 282V, 282W, 282X(1)(d) and (e) and (3)(c) and 282ZB but subject to subsection (7), where units or derivatives of units in a business trust initially acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z 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 282Z(3); or
- (c) any person pursuant to an offer referred to in section 282Z(2),

then Subdivision (2) of this Division shall apply to the offer resulting in that sale.

[1/2005]

[2/2009 wef 29/07/2009]

(1A) The reference to the sale of derivatives of units in a business trust under subsection (1) shall, in a case where the derivatives of units initially acquired are derivatives of units with an attached right of conversion into units in the business trust, include a reference to the sale of the converted units.

[2/2009 wef 29/07/2009]

(2) Where units or derivatives of units in a business trust initially acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z are sold to —

- (a) an institutional investor;
- (b) a relevant person as defined in section 282Z(3); or
- (c) any person pursuant to an offer referred to in section 282Z(2),

Subdivision (2) of this Division shall not apply to the offer resulting in that sale.

[1/2005]

(3) Subject to subsection (7), 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,

shall not be transferred within 6 months after the corporation has acquired any units or derivatives of units in a business trust pursuant to an offer made in reliance on an exemption under section 282Z unless —

- (i) that transfer —
  - (A) is made only to institutional investors or relevant persons as defined in section 282Z(3); or
  - (B) arises from an offer referred to in section 282Z(2);
- (ii) no consideration is or will be given for the transfer; or
- (iii) the transfer is by operation of law.

[1/2005]

[2/2009 wef 29/07/2009]

(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 shall not be transferred within 6 months after units or derivatives of units in a business trust are acquired for the trust pursuant to an offer made in reliance on an exemption under section 282Z unless —

(i) that transfer —

(A) is made only to institutional investors or relevant persons as defined in section 282Z(3); or

(B) 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 other assets;

(ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

[1/2005]

[2/2009 wef 29/07/2009]

(5) For the avoidance of doubt, the reference to beneficiaries in subsection (4) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

[1/2005]

(6) For the avoidance of doubt, where any units or derivatives of units in a business trust are acquired pursuant to an offer made in reliance on an exemption under section 282Y or 282Z, an offer to sell those units or derivatives of units may be made in reliance on an exemption under section 282X(1)(d) or (e) after 6 months have elapsed from the date of the first-mentioned offer.

[1/2005]

(7) Subsections (1), (3) and (4) shall not apply where the units or derivatives of units in the business trust acquired are of the same class as other units or derivatives of units in the business trust —

(a) an offer of which has previously been made in or accompanied by a prospectus; and

(b) which are listed for quotation on a securities exchange.

[2/2009 wef 29/07/2009]

**Offer of units converted from debentures**

**282ZAA.**—(1) Notwithstanding sections 282V, 282W, 282X(1)(d) and (e) and (3)(c) and 282ZB, where —

- (a) debentures with an attached right of conversion into units in a business trust are acquired pursuant to an offer made in reliance on an exemption under section 274 or 275; and
- (b) the debentures are then converted into the units,

then Subdivision (2) shall apply to an offer resulting in a sale of any of the units if the sale takes place within 6 months from the date of acquisition of the debentures.

(2) Subsection (1) shall not apply to a sale of the units to —

- (a) an institutional investor;
- (b) a relevant person as defined in section 282Z(3); or
- (c) any person pursuant to an offer referred to in section 282Z(2).

(3) Subsection (1) shall not apply where the units in the business trust sold are of the same class as other units in the business trust —

- (a) an offer of which has previously been made in or accompanied by a prospectus; and
- (b) which are listed for quotation on a securities exchange.

**Offer made using offer information statement**

**282ZB.**—(1) Subject to subsection (2), Subdivision (2) of this Division (other than subsection (1)(a) of section 282C and section 282Q) shall not apply to an offer of units or derivatives of units in a business trust (not being such securities as may be prescribed by the Authority) issued by a trustee-manager acting in its capacity as trustee-manager of the business trust where units of the business trust which have been previously issued are listed for quotation on a securities exchange, whether by means of a rights issue or otherwise, if —

- (a) in the case where derivatives of units in a business trust are being issued by the trustee-manager in its capacity as



trustee-manager of the business trust, the units are those of that business trust;

- (b) an offer information statement relating to the offer which complies with such form and content requirements as may be prescribed by the Authority is lodged with the Authority; and
- (c) either —
  - (i) the offer is made in or accompanied by the offer information statement referred to in paragraph (b); or
  - (ii) all the conditions in subsection (2A) are satisfied.

[1/2005]

[2/2009 wef 01/10/2012]

(2) Subsection (1) shall only apply to an offer of units or derivatives of units in a business trust 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 wef 01/10/2012]

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

- (a) the offer is made using any automated teller machine or such other electronic means as may be prescribed by the Authority;
- (b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —
  - (i) how he can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and
  - (ii) that he should read the offer information statement before submitting his application,  
before enabling him to submit any application to subscribe for or purchase securities; and
- (c) the person making the offer complies with such other requirements as the Authority may prescribe.

[2/2009 wef 01/10/2012]

(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 may be determined by the Authority.

[1/2005]

(4) Sections 282I, 282J, 282N, 282O and 282P shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

[1/2005]

(5) For the purposes of subsection (4) —

(a) a reference in section 282I or 282J to the registration of the prospectus shall be read as a reference to the lodgment of the offer information statement; and

(b) a reference in section 282N or 282O to any information or new circumstance required to be included in a prospectus under section 282F shall be read as a reference to any information prescribed under subsection (1)(b).

[1/2005]

(6) Where the written consent of an expert is required to be given under section 282I (as applied in relation to an offer information statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

[1/2005]

(7) Where the written consent of an issue manager or underwriter is required to be given under section 282J (as applied in relation to that statement under subsection (4)), that written consent shall be lodged with the Authority at the same time as the lodgment of the statement.

[1/2005]

### **Making offer using automated teller machine or electronic means**

**282ZC.**—(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, a person making an offer of units or derivatives of units in a business trust using —

(a) any automated teller machine; or

- (b) such other electronic means as may be prescribed by the Authority,

is exempted from the requirement under section 282C(1)(b)(i) that the offer be made in or accompanied by a prospectus in respect of the offer or, where applicable, the requirement under section 282C(4) that the offer be made in or accompanied by a profile statement in respect of the offer.

[1/2005]

(2) For the avoidance of doubt, a prospectus which complies with all other requirements of section 282C(1)(b)(i) or, where applicable, a profile statement which complies with all other requirements of section 282C(4) must still be prepared and issued in respect of any offer referred to in subsection (1).

[1/2005]

(3) Subsection (1) shall not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

- (a) how he can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and
- (b) that he should read the prospectus or, where applicable, profile statement before submitting his application,

before enabling him to submit any application to subscribe for or purchase units or derivatives of units in a business trust.

[1/2005]

### **Revocation of exemption**

**282ZD.**—(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 282X(7), 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.

[1/2005]

(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 shall remain in effect unless it is withdrawn by the Authority.

[1/2005]

(3) A revocation made under this section shall be final and conclusive and there shall be no appeal therefrom.

[1/2005]

### **Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act**

**282ZE.** For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

[1/2005]

#### *Subdivision (4) — Debentures*

### **Applicability of provisions relating to prospectus requirements**

**282ZF.** Division 1 of this Part shall apply, subject to such modifications and adaptations as may be prescribed, to an offer to subscribe for or purchase debentures or units of debentures (within the meaning of section 239(1)) issued by a trustee of a trust on behalf of the trust and have effect accordingly.

[1/2005]

#### *Division 2 — Collective Investment Schemes*

##### *Subdivision (1) — Interpretation*

### **Interpretation of this Division**

**283.—(1)** In this Division, unless the context otherwise requires —

“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, step-son, daughter, adopted daughter, step-daughter, father, step-father, mother, step-mother, brother, step-brother, sister or step-sister;

“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 may be prescribed by the Authority;

“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; or
- (b) any material, advertisement or publication which is authorised by section 300 (other than subsection (3));

“recognised securities exchange” means a corporation which has been declared by the Authority, by order published 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 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 he and his 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.

[16/2003; 1/2005]

(2) For the purposes of this Division, a statement shall be 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.

[1/2005]

(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) he 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 him or another person with whom he has made arrangements for that issue or sale; or

(b) he 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 him or another person with whom he has made arrangements for that issue or sale.

[1/2005]

(4) In subsection (3), “sale” includes any disposal for valuable consideration.

[1/2005]

### **Use of term “real estate investment trust”**

**283A.**—(1) No person shall, 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 published in the *Gazette* as persons who may use such term or derivative.

[31/2004; 1/2005]

(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 thereof during which the offence continues after conviction.

[31/2004]

(3) For the avoidance of 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.

[31/2004; 1/2005]

### **Code on Collective Investment Schemes**

**284.—**(1) For the more effective administration, supervision and control of collective investment schemes, the Authority shall, under



section 321, issue a code, to be known as the Code on Collective Investment Schemes.

(2) The Authority may from time to time revise the Code on Collective Investment Schemes by deleting, amending or adding to the provisions thereof.

(3) The Code on Collective Investment Schemes shall be deemed not to be subsidiary legislation.

### **Authority may disapply this Division to certain offers and invitations**

**284A.** Notwithstanding 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 published in the *Gazette* declared that this Division shall 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.

[16/2003; 1/2005]

[2/2009 wef 01/10/2012]

### **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.

[1/2005]

[2/2009 wef 01/10/2012]

**Modification of provisions to certain offers**

**284C.** The Authority may, if it thinks it necessary in the interest 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 shall apply to such offer subject to such modifications or adaptations.

*Subdivision (2) — Authorisation and recognition***Requirement for authorisation or recognition**

**285.**—(1) No person shall 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

**Authorised schemes**

**286.**—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2) and the conditions specified in subsection (3), authorise a collective investment scheme constituted in Singapore.

(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.

(3) It shall be 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  
*[2/2009 wef 29/07/2009]*
    - (C) all or any units of which are listed for quotation on a securities 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  
*[S 376/2008 wef 01/08/2008]*
- (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.

[16/2003]

(4) The Authority may authorise, under subsection (1), a collective investment scheme which is not constituted as a unit trust 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.

(5) Without prejudice to subsection (2), 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 wef 29/07/2009]

(6) The Authority shall 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.

[16/2003; 1/2005]

(7) The responsible person for a collective investment scheme may, within 30 days after he is notified that the Authority has refused to

authorise that scheme under subsection (1), appeal to the Minister whose decision shall be final.

[1/2005]

(8) An application made under subsection (1) shall 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 the approved trustee for the scheme, to the extent applicable, shall ensure that the conditions and requirements set out in subsections (2), (3) and (4) as applicable to that scheme shall continue to be satisfied.

(11) Notwithstanding subsection (10), a failure by any person to comply with the Code on Collective Investment Schemes shall 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) shall furnish 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.

(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 thereof during which the offence continues after conviction.

### **Recognised schemes**

**287.**—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2) and the conditions specified in subsection (3), recognise a collective investment scheme constituted outside Singapore.

(2) The Authority may recognise a collective investment scheme under subsection (1) if and only if the Authority is satisfied that —

- (a) 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) [*Deleted by Act 1/2005*]
- (c) there is a manager for the scheme which satisfies the requirements in subsection (3);
- (d) 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 XI of the Companies Act (Cap. 50);
- (e) the Authority has been furnished with information regarding —
  - (i) the name of the representative referred to in paragraph (d) and his address (where such representative is a corporation) or contact particulars (where such representative is an individual); and
  - (ii) such other information as the Authority may prescribe; and

- (f) the scheme, the manager for the scheme and the trustee for the scheme, where applicable, comply with this Act and the Code on Collective Investment Schemes.

[1/2005]

(3) It shall be a condition for the recognition of a collective investment scheme under subsection (1) that the manager for the scheme is —

- (a) licensed or regulated in the jurisdiction of its principal place of business; and
- (b) 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.

[16/2003; 1/2005]

(4) Without prejudice to 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 wef 29/07/2009]

(5) The Authority shall 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.

[16/2003; 1/2005]

(6) The responsible person for a collective investment scheme may, within 30 days after he is notified that the Authority has refused to recognise that scheme under subsection (1), appeal to the Minister whose decision shall be final.

[1/2005]

(7) An application made under subsection (1) shall 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 collective investment scheme recognised under subsection (1) shall ensure that the conditions and requirements set out in subsections (2) and (3), as applicable to that scheme, shall continue to be satisfied.

(10) Notwithstanding subsection (9), a failure by any person to comply with the Code on Collective Investment Schemes shall 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) shall furnish 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) shall 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 furnishing 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 (2)(e), give notice in writing of such change to the Authority;
- (d) furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act; and
- (e) such other functions as the Authority may prescribe.

(13A) In carrying out or procuring the carrying out of the functions referred to in subsection (13), the representative shall 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 him 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 him for inspection or extraction of the register or equivalent information in a language other than the language of the prospectus.

[16/2003]

(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.

[16/2003; 1/2005]

(13C) Section 318A(2) shall 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).

[16/2003]

(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 thereof during which the offence continues after conviction.

**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; or
- (c) in the case of —
  - (i) a scheme authorised under section 286, the responsible person for the scheme or the trustee 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).

[16/2003]

(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 he —

- (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 him 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 shall 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 him 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 thereof during which the offence continues after conviction.
- (5) Notwithstanding 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 shall 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 shall 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:

- (i) 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;
- (ii) the person making the offer (being an individual) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) 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.

*[16/2003; 1/2005]*

(8B) The responsible person for a collective investment scheme may, within 30 days after he is notified that the Authority —

- (a) has revoked the authorisation or recognition, as the case may be, of that scheme under subsection (1);
- (b) has suspended the authorisation or recognition, as the case may be, of that scheme under subsection (5); or
- (c) has refused to withdraw the authorisation or recognition, as the case may be, of that scheme under subsection (8),

appeal to the Minister whose decision shall be final.

*[1/2005]*

(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 it in such form and manner as may be prescribed, approve a public company to act as a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts (referred to in this Subdivision as an approved trustee).

(2) The Authority shall 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 shall continue to satisfy the financial requirements and other criteria prescribed under subsection (2).

(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);
- (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 —

- (i) 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;
- (ii) prohibit such approved trustee from acting as trustee for any new collective investment scheme; or
- (iii) issue such direction as it deems fit.

(5) An approved trustee shall comply with any direction issued to it under subsection (4).

(6) For the avoidance of doubt, a direction issued under subsection (4) shall be deemed not to be subsidiary legislation.

(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 thereof 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 shall afford the Authority access to, and shall produce, its books and shall give such information and facilities as may be required to conduct the inspection.

(3) The Authority shall have 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 furnish 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 shall 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, shall be void in so far 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) shall 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.

### **Authority may issue directions**

**293.**—(1) The Authority may, where it appears to the Authority to be necessary or expedient in the public interest to do so, issue directions by notice in writing either of a general or specific nature to —

- (a) where a collective investment scheme is constituted as a corporation, the corporation;
- (b) the manager, trustee, or representative for a collective investment scheme; or
- (c) any class of such persons referred to in paragraph (a) or (b).

(2) Any person to whom a notice is given under subsection (1) shall comply with such direction as may be contained in the notice.

(3) For the avoidance of doubt, a direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

(4) Any person who contravenes any of the directions issued to him 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 thereof during which the offence continues after conviction.

### **Service**

**294.**—(1) Where a collective investment scheme —

- (a) is authorised under section 286, any document relating to the scheme shall be sufficiently served if served on the responsible person for the scheme at his last known address; or
- (b) is recognised under section 287, any document relating to the scheme shall be sufficiently served if served on the

responsible person for the scheme or the representative for the scheme at his last known address.

(1A) For the avoidance of doubt, a reference in subsection (1) to service of any document relating to the scheme shall include the service of any process in relation to the scheme.

[1/2005]

(2) Any notice or direction to be given or served by the Authority on a corporation (where a collective investment scheme is constituted as a corporation), the manager for a collective investment scheme, the trustee for a collective investment scheme or the representative for a collective investment scheme shall for all purposes be regarded as duly given or served if it has been delivered or sent by post or facsimile transmission to such person at his last known address.

(3) In the case of a corporation, the last known address referred to in subsections (1) and (2) shall be —

- (a) if it is a company 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 agent or, if it does not maintain a place of business in Singapore, its registered office in the place of its incorporation.

## **Winding up**

**295.**—(1) Where a collective investment scheme is to be wound up, whether under this section or otherwise, the responsible person for the scheme shall give notice in writing of the proposed winding up to the Authority at least 7 days before the winding up.

(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 shall take the necessary steps to wind up the scheme.

(3) Where —

- (a) the responsible person for a collective investment scheme authorised under section 286 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 shall summon a meeting of the participants for the purpose of determining an appropriate course of action.

(4) A meeting under subsection (3) shall be summoned —

- (a) by giving notice in writing of the proposed meeting at least 21 days before the proposed meeting to each participant at his 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 shall 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.

(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 (referred to in this section as 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,

referred to in this section as 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 his units.

*[2/2009 wef 29/03/2010]*

(2) When a notice referred to in subsection (1) is given, the transferee shall, 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, be 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 wef 29/03/2010]*

(3) Where a transferee has given notice to any dissenting participant of the subject trust that it desires to acquire his units,

the dissenting participant shall be 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 him 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 shall not be 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 wef 29/03/2010]*

(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 shall 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 his units.

*[2/2009 wef 29/03/2010]*

(5) Where a participant has given notice under subsection (4)(b) with respect to any units, the transferee shall be 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 wef 29/03/2010]*

(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 shall —

- (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 shall thereupon register the transferee as the holder of those units.

*[2/2009 wef 29/03/2010]*

(7) Any sums received by the trustee of the subject trust under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that trustee in trust for the several persons who had held the units in respect of which they were respectively received.

(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 shall, before the expiration of 10 years from, the date on which such consideration was allotted or transferred to him, transfer such consideration to the Official Receiver.

(9) The Official Receiver shall sell or dispose of any consideration so received in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal in accordance with section 295B.

(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,

shall be treated as held or acquired by the transferee.

(11) For the avoidance of 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 his doing any of these as trustee of the first-mentioned 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 him as trustee of that other trust.

*[2/2009 wef 29/03/2010]*

(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 wef 29/03/2010]*

(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 (referred to in this subsection as 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 wef 29/03/2010]*

(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 his units to the transferee in accordance with the arrangement or contract;

“Official Receiver” means the Official Assignee appointed under the Bankruptcy Act (Cap. 20) and includes his deputy and any person appointed as Assistant Official Assignee;

“real estate investment trust” means a collective investment scheme that is —



- (a) authorised under section 286 or recognised under section 287; and
- (b) 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 all or any of the units of which are listed for quotation on a securities exchange.

*[2/2009 wef 29/03/2010]*

### **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 shall place the moneys to the credit of a separate account to be entitled the Compulsory Acquisition of Scheme Account.

*[2/2009 wef 29/03/2010]*

(2) The interest arising from the investment of the moneys standing to the credit of the Compulsory Acquisition of Scheme Account shall be paid into the Consolidated Fund.

*[2/2009 wef 29/03/2010]*

(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, shall authorise payment thereof to be made to him 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 him out of moneys made available by Parliament for the purpose.

(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.

(5) Where any unclaimed moneys paid to a person pursuant to subsection (3) are afterwards claimed by any other person, that other person shall not be 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 first-mentioned person to whom the unclaimed moneys have been paid.

(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 shall, 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 wef 29/03/2010]

### **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 himself or in disregard of his 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 himself.

[2/2009 wef 29/03/2010]

(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 prejudice to the generality of 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.

(3) Where an order under this section makes any alteration in or addition to the trust deed of any trust, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the manager or trustee of the trust concerned shall 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 shall have the same effect as if duly made by special resolution of the participants of the trust.

(4) A copy of any order made under this section shall be lodged by the applicant with the Authority within 7 days after the making of the order.

(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 thereof during which the offence continues after conviction.

(6) This section shall apply 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 shall be construed accordingly.

*[2/2009 wef 29/03/2010]*

*Subdivision (3) — Prospectus requirements***Requirement for prospectus and profile statement, where relevant**

**296.**—(1) No person shall 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 may be prescribed by the Authority;
  - (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 may be prescribed by the Authority.

[1/2005]

(1A) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.

[1/2005]

(1B) A preliminary document referred to in subsection (1A) shall contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.

[1/2005]

(2) Notwithstanding 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 (referred to in this Subdivision as 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.

[1/2005]

(2A) The copy of a prospectus or profile statement lodged with the Authority shall 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 his 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 in writing.

[1/2005]

(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 behalf.

[1/2005]

(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 behalf.

[1/2005]

(3) No person shall make an offer of units in a collective investment scheme if that scheme has not been formed or does not exist.

[1/2005]

(4) [*Deleted by Act 1/2005*]

(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 thereof 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 notice in writing to the Authority to withdraw the lodgment of the prospectus or profile statement, in which case the Authority shall not register the prospectus or profile statement.

[1/2005]

[2/2009 wef 29/03/2010]

(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 shall 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.

[1/2005]

[2/2009 wef 29/03/2010]

(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 wef 29/03/2010]*

(6B) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall 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.

*[1/2005]*

(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.

*[1/2005]*

(7) Subject to subsection (8) —

- (a) where any amendment to a prospectus is lodged, the prospectus and any profile statement which is lodged shall be 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 shall be deemed for the purposes of subsection (6) to have been lodged when such amendment was lodged.

*[16/2003; 1/2005]*

(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 shall be deemed, for the purposes of subsection (6), to have been lodged when the original prospectus or profile statement was lodged with the Authority.

*[1/2005]*



(8A) An amendment to a prospectus or profile statement that is lodged shall be treated as part of the original prospectus or profile statement.

[16/2003]

(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 shall 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.

[16/2003; 1/2005]

(10) The Authority shall 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.

[1/2005]

(11) The Authority shall 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.

[1/2005]

(12) The Authority shall 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.

[1/2005]

(13) Any person making an offer may, within 30 days after he is notified that the Authority has refused to register a prospectus or profile statement to which his offer relates under subsection (10) or (11), appeal to the Minister whose decision shall be final.

[1/2005]

(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 —

- (i) the issue, circulation or distribution of the prospectus or profile statement;
- (ii) the acceptance of the application to subscribe for or purchase the units; or
- (iii) 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 thereof during which the offence continues after conviction.

[1/2005]

(14A) For the purposes of subsections (10)(a) and (11)(a), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

(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.

**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 an order in writing (referred to in this section as 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.

*[16/2003; 1/2005]*

(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 an order in writing (referred to in this section as 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.

*[16/2003; 1/2005]*

(2A) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the units in a collective investment scheme to which the prospectus or profile statement relates has been issued or sold, and listed for quotation on a securities exchange and trading in them has commenced.

*[1/2005]*

(3) The Authority shall not serve a stop order under subsection (1) or (2) 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.

*[16/2003; 1/2005]*

(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 shall be 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 shall be deemed to be void,

and the person making the offer of units in the scheme shall, 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 notice in writing 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.

[1/2005]

(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 shall 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.

[1/2005]

(6) For the avoidance of doubt, a direction issued under subsection (4) shall be deemed not to be subsidiary legislation.

(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.

[1/2005]

(8) An interim stop order shall, unless revoked, be 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) or (2); or

(b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

(9) Subsection (4) shall 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) or (2) 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 thereof during which the offence continues after conviction.

(11) Any person who contravenes subsection (4), or any direction issued to him 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 thereof during which the offence continues after conviction.

[1/2005]

(12) For the purposes of subsections (1)(a) and (2)(a), any reference to a statement shall include a reference to any



information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **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 (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.

[1/2005]

(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 he 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.

[1/2005]

(3) At the beginning of a supplementary document, there shall 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.

[1/2005]

(4) At the beginning of a replacement document, there shall 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 shall 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.

[1/2005]

(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 shall be 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 shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement in relation to the offer.

[1/2005]

(8) [*Deleted by Act 1/2005*]

(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 shall be 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 shall be taken to be the replacement profile statement.

[1/2005]

(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) shall —
  - (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 notice in writing 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) shall, 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(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 thereof during which the offence continues after conviction.

(13) For the purposes of subsection (1)(a), the reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Duration of validity of prospectus and profile statement**

**299.**—(1) No person shall 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.

[1/2005]

(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 thereof during which the offence continues after conviction.

[1/2005]

(3) An issue or a sale of units in a collective investment scheme that is made in contravention of subsection (1) shall not, by reason only of that fact, be voidable or void.

[1/2005]

### **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 shall 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.

[16/2003; 1/2005]

(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 shall be had to whether the statement —

(i) 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

(ii) 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.

[1/2005]

(2A) Notwithstanding 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 shall not circulate it to any other person; and

(iii) a statement in bold lettering that no offer or agreement shall 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.

[1/2005]

(2B) Notwithstanding subsection (3A), a person does not contravene subsection (1) by presenting, before a prospectus or

profile statement is registered by the Authority, oral or written material —

- (a) 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) on matters contained in the prospectus or profile statement which has been lodged with the Authority, for the sole purpose of equipping any of the following persons with knowledge of the collective investment scheme to market the scheme under the Financial Advisers Act (Cap. 110):
  - (i) a person licensed under that Act in respect of marketing of collective investment schemes;
  - (ii) an exempt financial adviser;
  - (iii) a person who is a representative in respect of marketing of collective investment schemes under that Act;

[2/2009 wef 26/11/2010]

- (iv) a representative of an exempt financial adviser.

[1/2005]

(2C) In subsection (2B), “exempt financial adviser” and “representative” have the same meanings as in section 2(1) of the Financial Advisers Act (Cap. 110).

[2/2009 wef 26/11/2010]

(3) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority under section 296 without contravening subsection (1).

[1/2005]

(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.

[1/2005]

(3B) To satisfy subsection (3A), the advertisement or publication shall 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).

[1/2005]

(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 may be prescribed by the Authority.

[1/2005]

(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 a securities exchange, futures exchange or overseas securities exchange, made by any person, provided that the disclosure, notice or report complies with such requirements as may be prescribed by the Authority;

[2/2009 wef 29/07/2009]

- (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 may be prescribed by the Authority, 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); or
  - (iv) a report referred to in paragraph (b);
- (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  
*[2/2009 wef 01/10/2012]*
- (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 first-mentioned publication does not contain any material information that is not included in the prospectus.

*[1/2005]*

- (5) A person does not contravene subsection (1) if —
- (a) he 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) he 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) shall 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 authorised or permitted the publication or dissemination 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 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 thereof during which the offence continues after conviction.

[1/2005]

(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 may be determined by the Authority.

(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 thereof during which the offence continues after conviction.

(11) For the purposes of this section, any reference to publishing a statement shall be construed as including a reference to making a statement, whether oral or written, which is reasonably likely to be published.

[1/2005]

(12) For the purposes of subsections (1) and (2), any reference to a statement shall include a reference to any information presented, regardless of whether such information is in text or otherwise.

[1/2005]

### **Issue of units where prospectus indicates application to list on securities 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 securities exchange, and —

- (a) the permission is not applied for in the form required by the securities 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 securities exchange,

then —

- (i) any issue whenever made of units made on an application in pursuance of the prospectus shall be void; and
- (ii) 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 thereof during which the offence continues after conviction.

[1/2005]

(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 shall 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 shall be deemed to be void,

and the responsible person shall 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 notice in writing 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 shall 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 thereof during which the offence continues after conviction.

(5) Any responsible person to whom a notice is given under subsection (2) shall comply with such direction as may be contained in the notice.

(6) For the avoidance of doubt, a direction issued under subsection (2) shall be deemed not to be subsidiary legislation.

(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, shall 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).

[16/2003]

(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 thereof during which the offence continues after conviction.

(9) Where the securities exchange has, within the period specified in subsection (1)(b), granted permission subject to compliance with such requirements as may be specified by the securities exchange, permission shall be deemed to have been granted by the securities 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 securities exchange,

have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.

(10) Any person who fails to comply with any undertaking given to a securities 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 thereof during which the offence continues after conviction.

(11) A person shall 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 securities 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 securities exchange, or to any requirements of a securities 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 securities 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.

[16/2003; 1/2005]

(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 thereof 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 securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be 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 securities exchange.

[1/2005]

**Application of provisions relating to securities**

**302.**—(1) Sections 247, 249, 249A, 252, 253, 254 and 255 shall, with the necessary modifications, apply in relation to an offer of units in a collective investment scheme as they apply in relation to an offer of securities in Division 1 of this Part.

[1/2005]

(2) For the purposes of subsection (1), references in those sections to securities and to a person subscribing for, purchasing or acquiring securities shall be read as references to units in a collective investment scheme and to a person subscribing for, purchasing or acquiring such units, respectively.

[1/2005]

(3) For the purposes of subsection (1), references in sections 253 and 254 to an offer referred to in section 280 shall be read as a reference to an offer referred to in section 305C.

[1/2005]

(4) For the purposes of subsection (1), references in sections 249, 249A, 253 and 254 to the issuer shall be read as a reference to the responsible person.

[1/2005]

*Subdivision (4) — Exemptions***Issue or transfer for no consideration**

**302A.**—(1) Subdivisions (2) and (3) of this Division shall 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.

[1/2005]

(2) Subdivisions (2) and (3) of this Division shall 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.

[1/2005]



**Small offers**

**302B.**—(1) Subdivisions (2) and (3) of this Division shall 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 may be prescribed by the Authority 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 he makes the offer —

(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. 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 (referred to in this sub-paragraph as the initial offer) relates shall 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;
- [2/2009 wef 29/07/2009]*
- (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 securities;
  - (ii) an exempt person in respect of dealing in securities;
  - (iii) a person licensed under the Financial Advisers Act (Cap. 110) in respect of marketing of collective investment schemes;
  - (iv) an exempt financial adviser as defined in section 2(1) of the Financial Advisers Act; or
  - (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 securities or marketing of collective investment schemes, or who is exempted therefrom in respect of such dealing or marketing;
- [2/2009 wef 29/07/2009]*
- [1/2005]*
- (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 notice in writing of its intent to make the offer in reliance on the exemption under this subsection.
- [2/2009 wef 29/07/2009]*

(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 he makes the offer in accordance with that provision if such statement or notification is contained in the first page of that notice, circular, material, publication or document.

[1/2005]

(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) to (v) that he is interested in offers of that kind.

[1/2005]

(4) In determining the amount raised by an offer of units in a collective investment scheme, the following shall 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; and
- (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.

[1/2005]

(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 securities which is a closely related offer,

if any, within that period in reliance on the exemption under subsection (1), section 272A(1) or 282V(1) shall be included.

[1/2005]

(6) Whether an offer is a closely related offer under subsection (5) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(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 shall be treated as an offer made by that other person.

[1/2005]

(8) Where units acquired through an offer made in reliance on the exemption under subsection (1) (referred to in this subsection as an initial offer) are subsequently sold by the person who acquired the units to another person, Subdivisions (2) and (3) of this Division shall apply to the offer from the first-mentioned 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) to (v) that he is interested in offers of that kind;
- (iii) in respect of which the first-mentioned 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. 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 shall 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) to (v).

[1/2005]

(9) Subsection (2) shall apply, with the necessary modifications, in relation to the statement and notification referred to in subsection (8)(c)(iii).

[1/2005]

(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 —

(i) 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 persons to whom the offer is made so as to

assist them in making an investment decision in respect of the units being offered;

- (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange, which is made by any person; or

*[2/2009 wef 29/07/2009]*

- (iii) 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.

*[1/2005]*

### **Private placement**

**302C.**—(1) Subdivisions (2) and (3) of this Division shall 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;

*[2/2009 wef 29/07/2009]*

- (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) to (v); and

*[1/2005]*

- (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 notice in writing 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 wef 29/07/2009]

(2) The Authority may prescribe such other number of persons in substitution for the number specified in subsection (1)(a).

[1/2005]

(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 first-mentioned person; or
- (b) an offer of securities is made by the first-mentioned 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, section 272B or 282W shall be included.

[1/2005]

(4) Whether an offer is a closely related offer under subsection (3) shall be determined by considering such factors as the Authority may prescribe.

[1/2005]

(5) For the purposes of subsection (1) —

- (a) an offer of units in a collective investment scheme to an entity or to a trustee shall be 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 shall be 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 shall be 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) shall be 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 shall be 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 shall be 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 shall be 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).

[1/2005]

(6) In subsection (1)(b), “advertisement” has the same meaning as in section 302B(10).

[1/2005]

### **Offer or invitation made under certain circumstances**

**303.**—(1) Subdivision (3) of this Division shall 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 may be prescribed by the Authority) that have been previously issued, are listed for quotation or quoted on a securities exchange, and are traded on the exchange.

(2) Subdivisions (2) and (3) of this Division shall 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.

[1/2005]

### **Offer made to institutional investors**

**304.** Subdivisions (2) and (3) of this Division shall 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.

[1/2005]

### **First sale of units acquired pursuant to section 304**

**304A.**—(1) Notwithstanding 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 shall apply to the offer resulting in that sale.

[1/2005]

[2/2009 wef 29/07/2009]

(2) Subsection (1) shall 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) an offer of which has previously been made in or accompanied by a prospectus; and
- (b) which are listed for quotation on a securities exchange.

[2/2009 wef 29/07/2009]

### **Offer made to accredited investors and certain other persons**

**305.**—(1) Except to such extent and with such modifications as may be prescribed by the Authority, Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (referred to in this section as a restricted scheme), where the offer is made to a relevant person, if the conditions in subsection (3) are satisfied.

[1/2005]

(2) Except to such extent and with such modifications as may be prescribed by the Authority, Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme (also referred to in this section as 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 securities or other assets, and if the conditions in subsection (3) are satisfied.

[1/2005]

- (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) to (v); 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 notice in writing 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 wef 29/07/2009]

(4) [Deleted by Act 2/2009 wef 29/07/2009]

(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 —

- (i) an information memorandum;
  - (ii) a publication which consists solely of a disclosure, notice or report required under this Act, or any listing rules or other requirements of a securities exchange, futures exchange or overseas securities exchange, which is made by any person; or
- [2/2009 wef 29/07/2009]
- (iii) 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).

[1/2005]

(6) Notwithstanding any requirement under section 99 or any regulations made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires units in a collective investment scheme under section 304 or this

section for his own account without complying with such requirement shall be considered an exempt person even though he does not comply with that requirement.

[1/2005]

(7) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in subsection (2).

[1/2005]

### **First sale of units acquired pursuant to section 305**

**305A.**—(1) Notwithstanding 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 shall apply to the offer resulting in that sale.

[1/2005]

(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,

shall 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 —

- (i) that transfer —
  - (A) is made only to institutional investors or relevant persons as defined in section 305(5); or
  - (B) arises from an offer referred to in section 275(1A);
- (ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

[1/2005]

[2/2009 wef 29/07/2009]

(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 shall 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 —

(i) that transfer —

(A) is made only to institutional investors or relevant persons as defined in section 305(5); or

(B) 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 other assets;

(ii) no consideration is or will be given for the transfer; or

(iii) the transfer is by operation of law.

[1/2005]

[2/2009 wef 29/07/2009]

(4) For the avoidance of doubt, the reference to beneficiaries in subsection (3) shall include a reference to unitholders of a business trust and participants of a collective investment scheme.

[1/2005]

(5) Subsections (1), (2) and (3) shall not apply where the units in a collective investment scheme acquired are of the same class as other units in the scheme —

- (a) an offer of which has previously been made in or accompanied by a prospectus; and

(b) which are listed for quotation on a securities exchange.

[2/2009 wef 29/07/2009]

### **Offer made using offer information statement**

**305B.**—(1) Subject to subsection (2), Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme whose units are listed for quotation on a securities 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 may be prescribed by the Authority 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.

[1/2005]

[2/2009 wef 01/10/2012]

(2) Subsection (1) shall only apply 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 wef 01/10/2012]

(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 may be prescribed by the Authority;

(b) the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

(i) how he can obtain, or arrange to receive, a copy of the offer information statement in respect of the offer; and

(ii) that he should read the offer information statement before submitting his application,



before enabling him 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 wef 01/10/2012]

(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 may be determined by the Authority.

[1/2005]

(4) Sections 249, 249A, 253, 254 and 255 (as applied to this Division by virtue of section 302) and such requirements as may be prescribed by the Authority shall apply in relation to an offer information statement referred to in subsection (1) as they apply in relation to a prospectus.

[1/2005]

(5) For the purposes of subsection (4) —

- (a) a reference in sections 249 and 249A to the registration of the prospectus shall 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 shall be read as a reference to any information prescribed under subsection (1)(a).

[1/2005]

(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 shall be lodged with the Authority at the same time as the lodgment of the statement.

[1/2005]

(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 shall be lodged with the Authority at the same time as the lodgment of the statement.

[1/2005]

**Making offer using automated teller machine or electronic means**

**305C.**—(1) Subject to subsection (3) and such requirements as may be prescribed by the Authority, 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 may be prescribed by the Authority,

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.

[1/2005]

(2) For the avoidance of 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).

[1/2005]

(3) Subsection (1) shall not apply unless the automated teller machine or prescribed electronic means indicates to a prospective subscriber or buyer —

- (a) how he can obtain, or arrange to receive, a copy of the prospectus or, where applicable, profile statement in respect of the offer; and
- (b) that he should read the prospectus or, where applicable, profile statement before submitting his application,

before enabling him to submit his application to subscribe for or purchase units.

[1/2005]

**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.

[1/2005]

(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 thereof during which the offence continues after conviction.

(3) This Division shall 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 interest 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 shall remain in effect unless it is withdrawn by the Authority.

(3) A revocation under this section shall be final and conclusive and there shall be no appeal therefrom.

### **Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of this Act**

**308.** For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under

Division 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

[1/2005]

*Division 3 — Securities Hawking*

**Securities hawking prohibited**

**309.**—(1) No person shall make an offer to any person of securities for subscription or purchase, or an invitation to any person to subscribe for or purchase securities, in the course of, or arising from, an unsolicited meeting with that other person.

(2) Subsection (1) shall not apply to any person who makes an offer or invitation in respect of securities that does not need a prospectus by virtue of section 274, 275, 304 or 305.

(3) The Authority may exempt —

- (a) any person or class of persons; or
- (b) any class or description of securities,

from compliance with subsection (1), subject to such conditions as may be determined by the Authority.

[16/2003]

(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 he is convicted may order that any contract made as a result of the offer or invitation shall be void and may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any securities.

(6) An appeal against any order made under subsection (5) and any consequential directions shall lie to the High Court.

(7) In this section —

- (a) “securities” has the same meaning as in section 2 and also includes the securities of a corporation, whether the corporation is in existence or is to be formed;
- (b) a reference to an offer or invitation in respect of securities for subscription or purchase shall be construed as including an offer or invitation in respect of securities by way of barter or exchange.

[16/2003]

## PART XIV

### 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 thinks fit, and the decision of the Minister shall be final.

(2) Except for an appeal under Part II, III or IIIA, where an appeal is made to the Minister under this Act, the Minister shall, within 28 days of his 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.

[16/2003; 42/2005]

(3) The Appeal Advisory Committee shall 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 shall consider the report submitted under subsection (3) in making his decision under this section but he shall not be bound by the recommendations in the report.

#### **Appeal Advisory Committees**

**311.**—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 310, the Minister shall appoint a panel (referred to in this Part as 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 shall be appointed for a term of not more than 2 years and shall be eligible for re-appointment.

[16/2003]

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing relating to the securities or futures 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 inquiry.

(4) Nothing in subsection (3) shall compel the production by an advocate and solicitor of a document or material containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document or material which is in his possession.

(5) An advocate and solicitor who refuses to produce any document or other material referred to in subsection (4) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —

- (a) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224); and
- (b) in case of any suit or legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act, shall have the like protection and privileges as are by law given to a Judge in the execution of his office.

(7) Every Appeal Advisory Committee shall have regard to the interest 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 shall not be bound by the rules of evidence.

### **Disclosure of information**

**312.** Nothing in this Act shall require the Minister or any public servant to disclose facts which he considers to be against the interest of the public to disclose.

[16/2003]

### **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.

[16/2003]

(2) Without prejudice to the generality of 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 shall 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.

[16/2003]

## **PART XV**

### **MISCELLANEOUS**

**314.** [*Repealed by Act 1/2005*]

**315.** [*Repealed by Act 1/2005*]

### **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 shall be given an opportunity to be heard.

### **Records**

**317.—**(1) Subject to sections 94 and 99C, the Authority shall keep such records as it considers necessary, in such form as it thinks fit.

*[2/2009 wef 01/10/2012]*

(2) Any person may, on payment of the prescribed fee —

(a) inspect any records kept by the Authority under section 94 or 99C or any prospectus or profile statement lodged with the Authority under Part XIII; or

(b) require a copy of or extract from any such record to be given or certified by the Authority.

*[2/2009 wef 01/10/2012]*

(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 shall in any proceedings be 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,

shall be received as 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 shall be 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 furnished 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 shall be treated as not having been discharged; but
- (b) no account shall 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 shall be construed as including a reference to sending, forwarding, producing, furnishing, lodging or (in the case of a notice) giving the record.

### **Translation of instruments**

**318A.**—(1) Where a person submits or furnishes 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 IX) which is not in the English language, the person shall, at the same time or at such other time as may be permitted by the Authority, submit or furnish to or lodge with the Authority, as the case may be, an accurate translation thereof in the English language.

[16/2003]

(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 shall, at the same time or at such other time as may be permitted by the

Authority, make available for such inspection an accurate translation thereof in the English language.

[16/2003]

(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 shall —

- (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.

[16/2003]

(4) Subsections (1), (2) and (3) are subject to any express provision to the contrary in this Act or any regulations made thereunder.

[16/2003]

(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.

[16/2003]

(6) Where a person is charged with an offence under subsection (5), it shall be a defence for the person to prove that —

- (a) he had taken all reasonable steps to ensure that the translation that was submitted or furnished to 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) he had believed on reasonable grounds that the translation was accurate.

[16/2003]

(7) In subsections (1), (2) and (3), “Act” includes any direction made by the Authority under this Act.

[16/2003]

### **Supply of magnetic tapes — exclusion of liability for errors or omissions**

**319.** Where the Authority furnishes 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 furnishing 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.

[16/2003]

(1A) The Authority may, by notification published 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.

[16/2003]

(2) Any person appointed by the Authority under subsection (1) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224).

### **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 shall 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 shall, unless the context otherwise requires, be a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(5) Any person who fails to comply with any of the provisions of a code, guideline, policy statement or practice note issued under this section that applies to him shall 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 shall 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) For the avoidance of doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section shall be 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 interest 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, an exempt market operator, a person operating a clearing facility, a designated 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; 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.

[1/2005]

[2/2009 wef 01/10/2012]

(2) Without prejudice to the generality of subsection (1), the Authority may publish information relating to —

(a) the lapsing, revocation or suspension of the approval, licence or exemption granted to any person referred to 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, a securities exchange, a futures exchange or a designated clearing house and the outcome of such proceedings; and
- (h) any other action as may have been taken by the Minister, the Authority, a securities exchange, a futures exchange or a designated clearing house against any person referred to in subsection (1).

[1/2005]

**323.** [*Repealed by Act 24/2003*]

**Power of court to prohibit payment or transfer of moneys, securities, etc.**

**324.**—(1) Where —

- (a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute an offence under 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, as the case may be (referred to in this section as 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 securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property,

the court may, on application by the Authority, make any one or more of the following orders:

- (i) 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 that relevant person, or to another person at the direction or request of, the relevant person;
- (ii) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, securities, futures contracts, contracts in connection with leveraged foreign exchange trading, 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, securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property, to such relevant person, or to another person at the direction or request of, the relevant person;

- (iii) 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;
- (iv) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of securities or documents of title to securities, futures contracts, contracts in connection with leveraged foreign exchange trading, 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 securities from a register in Singapore to a register outside Singapore);
- (v) an order appointing —
  - (A) 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 that person; or
  - (B) 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 that person;
- (vi) where the relevant person is a natural person, an order requiring that person to deliver up to the court his passport and such other documents as the court thinks fit;
- (vii) where the relevant person is a natural person, an order prohibiting that person from leaving Singapore without the consent of the court.

(2) Where an application is made to the court for an order under subsection (1), 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.

(3) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court shall not 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 him 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) shall 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 a securities exchange, futures exchange, or designated clearing house, or the listing rules of a securities exchange; or
  - (iii) is about to do an act with respect to dealing in securities or trading in futures contracts that, if done, would be such an offence or contravention;

- (b) on the application of a securities exchange, it appears to the court that a person has contravened the business rules or listing rules of the securities exchange;
- (c) on the application of a futures exchange, it appears to the court that a person has contravened the business rules of the futures exchange; or
- (d) on the application of a designated clearing house, it appears to the court that a person has contravened the business rules of the designated clearing house,

the court may, without prejudice to any orders it would be entitled to make otherwise than under this section, make one or more of the following orders:

- (i) in the case of a persistent or continuing breach of this Act, or of any condition or restriction of a licence, or of any business rule of a securities exchange, futures exchange or clearing house, or any listing rule of a securities exchange an order restraining a person from carrying on business to deal in securities or trade in futures contracts, or acting as a representative of such a person, or from holding himself out as so carrying on business or so acting;
- (ii) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities or trading in any futures contracts that are specified in the order;
- (iii) an order appointing a receiver of the property of the holder of a capital markets services licence to deal in securities or trade in futures contracts or of property that is held by such a holder for or on behalf of another person whether on trust or otherwise;
- (iv) an order declaring a contract relating to any dealing in securities or trading in futures contracts to be void or voidable;
- (v) 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;

- (vi) any ancillary order deemed to be desirable in consequence of the making of any of these orders.

[1/2005]

(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 securities or trade in futures contracts —

- (a) may require the holder to deliver to the receiver any property of which he 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 he has been appointed receiver;
- (c) may deal with any property that he has acquired or of which he 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) For the purposes of subsections (1) and (3), “property”, in relation to the holder of a capital markets services licence to deal in securities or trade in futures contracts, includes moneys, securities, futures contracts and documents of title to securities or 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 securities or trading in futures contracts carried on by the holder.

(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) Subsection (5) shall not affect the powers of the court in relation to the punishment for contempt of court.

(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 first-mentioned 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 he 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 first-mentioned 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 him 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 first-mentioned 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 first-mentioned person refuses or fails to do that act or thing.

(10) Where any person referred to in subsection (1) or (2) 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 shall not require that person or any other person, as a condition of granting the injunction, order, interim injunction or interim order, to give any undertaking as to damages.

(11) Subsection (7) shall not affect the powers of the court in relation to the punishment for contempt of court.

### **Criminal jurisdiction of District Court**

**327.** Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have 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 approved exchange, recognised market operator, exempt market operator, person operating a clearing facility, designated clearing house, approved holding company, holder of a capital markets services licence to carry on business in any regulated activity, exempt person, representative, or approved trustee for a collective investment scheme as defined in section 289.

[1/2005]

[2/2009 wef 01/10/2012]

### **Duty not to furnish false information to Authority**

**329.**—(1) Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading in any material particular.



(2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing 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 him by the Authority,

shall use due care to ensure that the document is not false or misleading in any material particular.

*[2/2009 wef 26/11/2010]*

(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 furnish false statements to securities exchange, futures exchange, designated clearing house and Securities Industry Council**

**330.**—(1) Any person who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to a securities exchange, futures exchange, designated clearing house or any officers thereof relating to —

- (a) dealing in securities, trading in futures contracts, foreign exchange trading or leveraged foreign exchange trading;
- (b) the enforcement of the business rules of a securities exchange, futures exchange or a designated clearing house or the listing rules of a securities exchange;
- (c) the affairs of an entity or a business trust;
- (d) a collective investment scheme;
- (e) the affairs of the trustee-manager of a registered business trust; or

(f) a registered business trust which is managed and operated by the trustee-manager of the registered business trust, 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.

[31/2004; 1/2005]

(2) Any person who, with intent to deceive, makes or furnishes or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to the 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)(c), the reference to affairs of an entity or a business trust shall —

(a) in the case of an entity which is a corporation, be construed as including 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,

be construed as a reference to such matters as may be prescribed by the Authority.

[1/2005]

### **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) shall apply in relation to the acts and

defaults of a member in connection with his functions of management as if he 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.

[5/2005]

(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 (Act 5 of 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.

[16/2003; 1/2005; 5/2005]

(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, a securities exchange, a futures exchange, a recognised market operator, a designated clearing house, or a holder of a capital markets services licence to carry on business in any regulated activity, 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.

[1/2005]

(2) In any proceedings against an officer under subsection (1), it shall be a defence for the defendant to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, 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 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) shall not apply to —

(a) offences under sections 6(4) and (5), 8(12), 14(11), 16A(3) and (4), 22, 23(4), 27(11), 28(12), 29(3), 30(4), 32(7), 34(9), 43, 44(10), 46(2), 49(7) and (8), 50(2), 51(2), 52(2), 54(9), 56(2), 61(3), 70, 75(11) and (12), 76(12), 77(4), 78(4), 79(2), 80(14) and (15), 81(9), 81A(10), 81U(2), 81W(8), 81ZA(3), 81ZB(2), 81ZC(2), 81ZD(3), 81ZE(11) and (12), 81ZF(13), 81ZG(4), 81ZJ(10), 81ZL(2), 103, 105, 107(3) and (4), 289(7), 290(4) and 295(6); or

*[2/2009 wef 26/11/2010]*

(b) offences under any subsidiary legislation made under this Act where it is expressly provided in the subsidiary legislation that subsection (1) shall not apply to those offences.

*[16/2003; 42/2005]*

(3) Where an individual is convicted of an offence under this Act by virtue of section 331, he shall be liable to the fine or imprisonment or both as prescribed for that offence and subsection (1) shall 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 interest 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;
  - (iia) 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 a securities exchange, a futures exchange or designated clearing house, or the listing rules of a securities exchange;
- (b) the failure by an officer of a relevant person to discharge any duty or function of his 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 an approved exchange, a recognised market operator, an exempt market operator, a person operating a clearing facility, a designated clearing house, an approved holding company, a holder of a capital markets services licence, an exempt person, an approved trustee for a

collective investment scheme as defined in section 289, or any employee, officer, partner or representative thereof.

[16/2003; 1/2005]

[2/2009 wef 01/10/2012]

### **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 XII may be taken only with the consent of the Public Prosecutor.

[15/2010 wef 02/01/2011]

(2) The Authority may, in its discretion, 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 the maximum fine prescribed for that offence.

### **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*.

[16/2003]

(3) The Authority may, on the application of any person, by notice in writing exempt the person from all or any of the requirements specified in any direction made by the Authority under this Act.

[16/2003]

(4) An exemption granted under subsection (3) —

(a) may be granted subject to such conditions or restrictions as the Authority may specify by notice in writing; and

(b) for the avoidance of doubt, need not be published in the *Gazette* and may be revoked at any time by the Authority.

[16/2003]

(4A) The Authority may at any time add to, vary or revoke any condition or restriction imposed under this section.

[2/2009 wef 26/11/2010]

(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 wef 26/11/2010]

[16/2003]

### **Power to make regulations giving effect to treaty, etc., relating to securities or futures**

**338.**—(1) Without prejudice to the generality of 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 or futures industry, to which Singapore or the Authority is a party.

(2) Without prejudice to the generality of 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 XIII;



- (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.

[1/2005]

### **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 II, III, IV, VIII, XII, XIII or XV,

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.

(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 XII; 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 XII,

the act shall be treated as being carried out by that person in Singapore.

[16/2003]

(3) The Authority may, by regulations, specify the circumstances under which subsection (2) or (2A)(b) does not apply.

[16/2003]

### **Amendment of Schedules**

**340.**—(1) The Minister may by order published in the *Gazette*, amend, add to or vary the First, Second, Third or Fourth Schedule.

[16/2003]

(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) shall 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 shall 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 prejudice to the generality of 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;  
*[2/2009 wef 26/11/2010]*
- (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 and the conduct of such solicitation;
- (e) *[Deleted by Act 16/2003]*
- (f) the conditions for the conduct of business on a securities exchange, futures exchange, recognised market operator, or clearing facility;
- (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 securities and their duties relating to the registers, and matters relating thereto;  
*[2/2009 wef 19/11/2012]*
- (m) the specification of manipulative and deceptive devices and contrivances in connection with the purchase or sale of securities, futures contracts or leveraged foreign exchange trading;
- (n) the regulation or prohibition of trading on the floor of a securities exchange, futures exchange or recognised market operator by members of a securities exchange, futures exchange or 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 a securities exchange, futures exchange or recognised market operator but off the floor of a securities exchange, futures exchange or recognised market operator by members of a securities exchange, futures exchange or 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 market; and the exemption of such transactions as the Authority may decide to be necessary in the interest 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 interest of the public, or a section of the public or for the protection of investors;
- (p) the prohibition or regulation of dealing in securities in circumstances where the person who deals in the securities does not hold or have an interest in the securities which are being or are proposed to be dealt with;
- (q) the prohibition or restriction of forward contracts in securities of corporations that are admitted to the official list of a securities 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.

[16/2003; 1/2005]

(3) Except as otherwise expressly provided in this Act, the regulations made under this Act —

- (a) may be of general or specific application;
- (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 thereof during which the offence continues after conviction.

(4) Where a person is charged with an offence for contravening a regulation made under subsection (2)(la), it shall be a defence for the person to prove —

- (a) that his contravention was due to his not being aware of a fact or occurrence, the existence of which was necessary to constitute the offence; and
- (b) that —
- (i) he was not so aware on the date of the summons issued for the charge; or
- (ii) he became so aware before the date of the summons and complied with the regulation within 14 days after becoming so aware.

(5) For the purposes of subsection (4), a person shall, in the absence of proof to the contrary, be 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 employer's or principal's interest or interests in the securities concerned, was aware of at that time.

[16/2003]

[2/2009 wef 19/11/2012]

### **Regulations to apply Act to persons and matters previously regulated under Commodity Trading Act**

**342.**—(1) The Authority may by regulations prescribe such provisions as it may consider necessary or expedient for the purpose of applying this Act in relation to commodity futures contracts, trading in futures contracts, commodity futures brokers, commodity futures broker's representatives, Commodity Futures Exchanges, commodity futures markets, commodity futures pool

operators and commodity futures pool operator's representatives; and for this purpose this Act shall apply with such modifications as may be prescribed.

(2) In subsection (1), "commodity futures contract", "trading in futures contract", "commodity futures broker", "commodity futures broker's representative", "Commodity Futures Exchange", "commodity futures market", "commodity futures pool operator" and "commodity futures pool operator's representative" have the meanings given to those expressions in the Commodity Trading Act (Cap. 48A) in force immediately before the commencement of this provision.

[35/2007 wef 27/08/2007]

## FIRST SCHEDULE

Section 2

### PART I

#### MARKET

##### **Definition of market**

1. In this Act, "market" means a securities market or futures market.

##### **Definition of futures market**

2.—(1) In this Act, "futures market" means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange futures contracts 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 sell, purchase or exchange futures contracts (whether through that place or facility or otherwise).

(2) For the purposes of this Act, "futures market" does not include —

(a) a place or facility used by only one person —

- (i) to regularly make offers or invitations to sell, purchase or exchange futures contracts; or
- (ii) to regularly accept offers to sell, purchase or exchange futures contracts; or

(b) a place or facility that enables persons to negotiate material terms (in addition to the price) of, and enter into transactions in, futures

FIRST SCHEDULE — *continued*

contracts, where the material terms (in addition to the price) of futures contracts are discretionary and not predetermined by the rules or practices of the place or facility.

**Definition of securities market**

3.—(1) In this Act, “securities market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange issued securities or such other securities as the Authority may prescribe 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 sell, purchase or exchange issued securities or prescribed securities (whether through that place or facility or otherwise).

(2) For the purposes of this Act, “securities 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 securities; or
- (b) to regularly accept offers to sell, purchase or exchange securities.

## PART II

## CLEARING FACILITY

**Definition of clearing facility**

4.—(1) In this Act —

“clearing facility” means —

- (a) a facility for the clearing or settlement of —
  - (i) transactions in securities; or
  - (ii) futures contracts; or
- (b) such other facility or class of facilities for the clearing or settlement of transactions as the Authority may, by order, prescribe;

[2/2009 wef 01/10/2012]

“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 —



FIRST SCHEDULE — *continued*

- (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 (referred to in this sub-paragraph as 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.

## SECOND SCHEDULE

Sections 2 and 340(4)

## REGULATED ACTIVITIES

## PART I

## TYPES OF REGULATED ACTIVITIES

The following are regulated activities for the purposes of this Act:

- (a) dealing in securities;
- (b) trading in futures contracts;
- (c) leveraged foreign exchange trading;
- (d) advising on corporate finance;
- (e) fund management;
- (ea) real estate investment trust management;

SECOND SCHEDULE — *continued*

- (f) securities financing;
  - (fa) providing credit rating services;
- [S 20/2012 wef 17/01/2012]*
- (g) providing custodial services for securities.

## PART II

## 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 a securities 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 securities; or
  - (ii) to sell or otherwise dispose of securities, concerning that offer;
- (c) concerning the arrangement, reconstruction or take-over of a corporation or any of its assets or liabilities; or
- (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;

*[S 20/2012 wef 17/01/2012]*

“dealing in securities” 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, subscribing for, or underwriting securities;

SECOND SCHEDULE — *continued*

“financial institution” means —

- (a) any bank licensed under the Banking Act (Cap. 19);
- (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); or
- (c) any finance company licensed under the Finance Companies Act (Cap. 108);

“foreign exchange trading” means the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or an arrangement the effect of which is that —

- (a) a party agrees to exchange currency at an agreed rate of exchange with another party whether the currency exchange is effected at the same time or at a specified future time and whether by way of delivery of an amount of currency for another currency, by way of crediting the account of the other party with an amount of another currency, by way of settlement or set-off between 2 or more persons or otherwise; or
- (b) a party agrees to settle in any manner with another party the difference between the value of any currency index agreed at the time of the making of the contract or arrangement and at a specified future time,

but does not include any act performed for or in connection with a contract or an arrangement which is a futures contract or such a proposed contract or proposed arrangement;

“fund management” means undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise) —

- (a) the management of a portfolio of securities or futures contracts;  
or
- (b) foreign exchange trading or leveraged foreign exchange trading for the purpose of managing the customer’s funds,

but does not include real estate investment trust management;

“leveraged foreign exchange trading” means —

- (a) foreign exchange trading on a margin basis whereby a person undertakes, as determined by the terms and conditions of the foreign exchange trading contract or arrangement —
  - (i) to make an adjustment between himself and another person according to whether a currency is worth more

SECOND SCHEDULE — *continued*

or less, as the case may be, in relation to another currency, or according to whether a currency index rises or falls in value, as the case may be, in relation to an agreed value;

- (ii) to pay an amount of money determined or to be determined by reference to the change in value of a currency in relation to another currency, or by reference to the change in value of a currency index in relation to an agreed value; or
  - (iii) to deliver to another person at an agreed future time an agreed amount of currency at an agreed price;
- (b) the provision by any person referred to in paragraph (a) of any advance, credit facility or loan, directly or indirectly, to facilitate an act of the description referred to in that paragraph; or
- (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person (whether on a discretionary basis or otherwise) to enter into any contract to facilitate an act of the description mentioned in paragraph (a) or (b),

but does not include any act performed for or in connection with a contract or an arrangement —

- (i) arranged by a bank that is licensed under the Banking Act (Cap. 19) or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
- (ii) by any person belonging to such class of persons, or carrying on such class or description of business, as may be prescribed by the Authority; or
- (iii) which is a futures contract,

or such a proposed contract or arrangement;

“offer” or “offering” includes invitation to treat;

“on a margin basis”, in relation to the definition of “leveraged foreign exchange trading”, means the first-mentioned person referred to in the definition of “leveraged foreign exchange trading” entering into the contract or arrangement referred to therein by providing to the offeror or his agent money, securities, property or other collateral which represents

SECOND SCHEDULE — *continued*

only a part of the value of the contract or arrangement to be entered into by him;

“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
- (b) distribution by subscription, whether in Singapore or elsewhere, or with a reasonable expectation that they will be so distributed,

but does not include —

- (i) 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
- (ii) preparing credit scores, credit scoring systems or similar assessments related to obligations arising from consumer, commercial or industrial relationships;

*[S 20/2012 wef 17/01/2012]*

“providing custodial services for securities” means 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 securities of the customer and carries out one or more of the following functions for the customer:

- (a) settlement of transactions relating to the securities;
- (b) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the securities;
- (c) paying tax or other costs associated with the securities;
- (d) exercising rights, including without limitation voting rights, attached to or derived from the securities;
- (e) any other function necessary or incidental to the safeguarding or administration of the securities,

but does not include —

- (i) the activities of a corporation which is a Depository as defined in Division 7A of Part IV of the Companies Act (Cap. 50);
- (ii) the provision of services to a related corporation or connected person, so long as none of the securities is —

SECOND SCHEDULE — *continued*

- (A) held on trust for another person by the related corporation or connected person;
  - (B) held as a result of any custodial services provided by the related corporation or connected person to another person; or
  - (C) beneficially owned by any person other than the related corporation or connected person;
- (iii) the provision of services by a nominee corporation which are solely incidental to the business of a nominee corporation; or
  - (iv) any other conduct as the Authority may 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;

[S 20/2012 wef 17/01/2012]

“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) securities;

[S 20/2012 wef 17/01/2012]

“real estate investment trust management” means managing or operating 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

[2/2009 wef 29/07/2009]

- (c) all or any units of which are listed for quotation on a securities exchange;

[S 376/2008 wef 01/08/2008]

“securities financing” means to directly or indirectly facilitate, by providing any credit facility, advance or loan —

- (a) the subscription for securities, or the purchase of securities listed or to be listed on a securities market or such other securities as the Authority may prescribe; and

SECOND SCHEDULE — *continued*

(b) where applicable, the continued holding of those securities, whether or not those securities are pledged as security for the credit facility, advance or loan, but does not include the provision of any credit facility, advance or loan —

- (i) that forms part of an arrangement to underwrite or sub-underwrite securities;
- (ii) [*Deleted by Act 16/2003*]
- (iii) to a holder of a capital markets services licence to deal in securities or provide securities financing, or a financial institution, to facilitate acquisitions or holdings of securities;
- (iv) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities;
- (v) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member; or
- (vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities;

“trading in futures contracts” means (whether as principal or agent) —

- (a) 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 the purchase or sale of a futures contract; or
- (b) soliciting or accepting any order for, or otherwise dealing in, a futures contract.

[16/2003; 1/2005]

## THIRD SCHEDULE

Sections 82(2) and 286(3)

## SPECIFIED PERSONS

1. Any company licensed under the Trust Companies Act 2005 (Act 11 of 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, law corporation, Formal Law Alliance or Joint Law Venture which is approved or registered under the Legal Profession Act (Cap. 161); or

(b) public accountant who is registered under the Accountants Act (Cap. 2) 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 powers under the Bankruptcy Act (Cap. 20).

5. The Public Trustee in exercising his powers under the Public Trustee Act (Cap. 260).

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. *(Deleted by Act 1/2005)*

9. A foreign company whose carrying on of any regulated activity is effected under an arrangement 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), where such arrangement is approved by the Authority.

*[16/2003; 1/2005; 11/2005]*

## FOURTH SCHEDULE

Section 320(1A)

## SPECIFIED PROVISIONS

1. Section 14(2) and (8)

2. Section 15(1)

3. Section 35

4. Section 59(3)

5. Section 81C

6. Section 81ZI



FOURTH SCHEDULE — *continued*

7. [*Deleted by Act 2/2009 wef 01/10/2012*]
8. Section 99(1)(h)
9. [*Deleted by Act 2/2009 wef 01/10/2012*]
10. Section 247(1)
11. Section 248(2) and (5)
12. Section 249(3)
13. Section 251(14)
14. Section 259(3)
15. Section 262(2)
16. Section 277(2)
17. Section 282H(1)
18. Section 282I(5)
19. Section 282L(14)
20. Section 282S(3)
21. Section 282ZB(3)
22. Section 300(9)
23. Section 302 (when applying section 247(1) or 249(3))
24. Section 305B(3)
25. Section 306(1)
26. Section 309(3)(a)
27. Section 337(3).

[1/2005]

LEGISLATIVE SOURCE KEY  
SECURITIES AND FUTURES ACT  
(CHAPTER 289)

Unless otherwise stated, the abbreviations used in the references to other Acts and statutory provisions are references to the following Acts and statutory provisions. The references are provided for the convenience of users and are not part of the Act:

Aust. Corporations 2001	: Australia, Corporations Act 2001 (No. 50, 2001)
Aust. FSR Bill 2001	: Australia, Financial Services Reform Bill 2001
ASIC 1989	: Australia, Australian Securities and Investment Commission Act 1989
HK SF Bill	: Hong Kong, Securities and Futures Bill ( <i>Gazette</i> published on 24 November 2000, Legal Supplement No. 3)
HK CUTMF	: Hong Kong, Code on Unit Trusts and Mutual Funds
Malaysia SIA	: Malaysia, Securities Industry Act 1983
UK FSMA 2000	: United Kingdom, Financial Services and Markets Act 2000 (Chapter c. 8)
Companies	: Singapore, Companies Act (Chapter 50, 1994 Revised Edition)
E(DM)A	: Singapore, Exchange (Demutualisation and Merger) Act (Chapter 88, 2000 Revised Edition)
FTA	: Singapore, Futures Trading Act (Chapter 116, 1996 Revised Edition — <i>repealed</i> )
Insurance Intermediaries	: Singapore, Insurance Intermediaries Act (Chapter 142A, 2000 Revised Edition — <i>repealed</i> )
SFA	: Singapore, Securities and Futures Act (Chapter 289, 2002 Revised Edition)
SIA	: Singapore, Securities Industry Act (Chapter 289, 1985 Revised Edition — <i>repealed</i> )

LEGISLATIVE HISTORY  
SECURITIES AND FUTURES ACT  
(CHAPTER 289)

This Legislative History is provided for the convenience of users of the Securities and Futures Act. It is not part of the Act.

**1. Act 42 of 2001 — Securities and Futures Act 2001**

Date of First Reading	:	25 September 2001 (Bill No. 33/2001 published on 26 September 2001)
Date of Second and Third Readings	:	5 October 2001
Dates of commencement	:	1 January 2002 1 July 2002 1 October 2002

**2. G. N. No. S 674/2001 — Securities and Futures Act (Amendment of Second Schedule) Order 2001**

Date of commencement	:	1 January 2002
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**3. Act 39 of 2002 — Payments and Settlement Systems (Finality and Netting) Act 2002**

(Consequential amendments made to Act by)

Date of First Reading	:	31 October 2002 (Bill No. 41/2002 published on 1 November 2002)
Date of Second and Third Readings	:	25 November 2002
Date of commencement	:	9 December 2002

**4. 2002 Revised Edition — Securities and Futures Act**

Date of operation	:	31 December 2002
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**5. Act 16 of 2003 — Securities and Futures (Amendment) Act 2003**

Date of First Reading	:	14 August 2003 (Bill No. 15/2003 published on 15 August 2003)
Date of Second and Third Readings	:	2 September 2003
Date of commencement	:	22 December 2003

**6. Act 24 of 2003 — Monetary Authority of Singapore (Amendment) Act 2003**

(Consequential amendments made to Act by)

- Date of First Reading : 16 October 2003  
(Bill No. 21/2003 published on 17 October 2003)
- Date of Second and Third Readings : 10 November 2003
- Date of commencement : 1 January 2004

**7. Act 5 of 2004 — Companies (Amendment) Act 2004**

(Consequential amendments made to Act by)

- Date of First Reading : 5 January 2004  
(Bill No. 3/2004 published on 6 January 2004)
- Date of Second and Third Readings : 6 February 2004
- Date of commencement : 1 April 2004

**8. Act 31 of 2004 — Securities and Futures (Amendment) Act 2004**

- Date of First Reading : 20 July 2004  
(Bill No. 29/2004 published on 21 July 2004)
- Date of Second and Third Readings : 1 September 2004
- Date of commencement : 12 October 2004

**9. Act 5 of 2005 — Limited Liability Partnerships Act 2005**

(Consequential amendments made to Act by)

- Date of First Reading : 19 October 2004  
(Bill No. 64/2004 published on 20 October 2004)
- Date of Second and Third Readings : 25 January 2005
- Date of commencement : 11 April 2005

**10. Act 1 of 2005 — Securities and Futures (Amendment) Act 2005**

- Date of First Reading : 19 October 2004  
(Bill No. 46/2004 published on 20 October 2004)
- Date of Second and Third Readings : 25 January 2005
- Date of commencement : 1 July 2005  
15 October 2005

**11. Act 42 of 2005 — Statutes (Miscellaneous Amendment No. 2) Act 2005**

Date of First Reading	:	17 October 2005 (Bill No. 30/2005 published on 18 October 2005)
Date of Second and Third Readings	:	21 November 2005
Date of commencement	:	1 July 2005 1 January 2006 30 January 2006 1 April 2006

**12. Act 11 of 2005 — Trust Companies Act 2005**

(Consequential amendments made to Act by)

Date of First Reading	:	25 January 2005 (Bill No. 1/2005 published on 26 January 2005)
Date of Second and Third Readings	:	18 February 2005
Date of commencement	:	1 February 2006

**13. 2006 Revised Edition — Securities and Futures Act**

Date of operation	:	1 April 2006
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**14. Act 2 of 2007 — Statutes (Miscellaneous Amendments) Act 2007**

Date of First Reading	:	8 November 2006 (Bill No. 14/2006 published on 9 November 2006)
Date of Second and Third Readings	:	22 January 2007
Date of commencement	:	1 March 2007

**15. Act 35 of 2007 — Commodity Trading (Amendment) Act 2007**

(Consequential amendments made to Act by)

Date of First Reading	:	21 May 2007 (Bill No. 23/2007 published on 22 May 2007)
Date of Second and Third Readings	:	17 July 2007
Date of commencement	:	27 August 2007 27 February 2008

**16. G. N. No. S 376/2008 — Securities and Futures Act (Amendment of Second Schedule and Other Provisions to Act for REIT Management) Order 2008**

Date of commencement : 1 August 2008

**17. Act 15 of 2010 — Criminal Procedure Code 2010**

(Consequential amendments made to Act by)

Date of First Reading : 26 April 2010  
(Bill No. 11/2010 published on  
26 April 2010)

Date of Second and Third Readings : 19 May 2010

Date of commencement : 2 January 2011

**18. 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**

Date of commencement : 17 January 2012

**19. Act 2 of 2009 — Securities and Futures (Amendment) Act 2009**

Date of First Reading : 15 September 2008  
(Bill No. 23/2008 published on  
16 September 2008)

Date of Second and Third Readings : 19 January 2009

Date of commencement : 20 April 2009  
29 July 2009  
29 March 2010  
26 November 2010  
1 October 2012  
19 November 2012

**COMPARATIVE TABLE**  
**SECURITIES AND FUTURES ACT**  
**(CHAPTER 289)**

The following provisions in the 2002 Revised Edition of the Securities and Futures Act have been omitted by the Law Revision Commissioners in this 2006 Revised Edition.

This Comparative Table is provided for the convenience of users. It is not part of the Securities and Futures Act.

<b>2006 Ed.</b>	<b>2002 Ed.</b>
—	<b>88—(4)</b> ( <i>Deleted by Act 1/2005</i> )
—	<b>96—(6)</b> ( <i>Deleted by Act 1/2005</i> )
—	<b>104—(3)</b> ( <i>Deleted by Act 16/2003</i> )
—	<b>203—(4)</b> ( <i>Deleted by Act 1/2005</i> )
—	<b>247—(6)</b> ( <i>Deleted by Act 16/2003</i> )
—	<b>257—(6)</b> ( <i>Deleted by Act 1/2005</i> )
—	<b>268—(14)</b> ( <i>Deleted by Act 1/2005</i> )
—	<b>287—(3) (b) (iv) to (vi)</b> ( <i>Deleted by Act 16/2003</i> )
—	<b>(3) (c)</b> ( <i>Deleted by Act 1/2005</i> )
—	<b>(5) (d)</b> ( <i>Deleted by Act 16/2003</i> )
<i>Omitted (spent)</i>	<b>342</b> (Consequential amendments to other written laws)
<i>Omitted (spent)</i>	<b>343</b> (Transitional provisions)