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The following Act was passed by Parliament on 15th November 2012 and assented to by the President on 5th December 2012:—

REPUBLIC OF SINGAPORE

No. 34 of 2012.

I assent.



TONY TAN KENG YAM,
President.

An Act to amend the Securities and Futures Act (Chapter 289 of the 2006 Revised Edition) and to make consequential and related amendments to certain other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Securities and Futures (Amendment) Act 2012 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of long title

2. The long title to the Securities and Futures Act (referred to in this Act as the principal Act) is amended by deleting the words “and futures” and substituting the words “, futures and derivatives”.

Amendment of section 2

3. Section 2(1) of the principal Act is amended —

(a) by deleting the words “section 130A” in the definition of “advocate and solicitor” and substituting the words “section 2(1)”;

(b) by inserting, immediately after the definition of “appointed representative”, the following definition:

““approved clearing house” means a corporation that is approved by the Authority under section 51(1)(a) as an approved clearing house;”;

(c) by deleting the definition of “business rules” and substituting the following definition:

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

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

members, or the licensed trade repository or licensed foreign trade repository and its participants; and

(b) other persons in relation to it,

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

(d) by deleting paragraph (a) of the definition of “chief executive officer” and substituting the following paragraph:

“(a) in relation to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company 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, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, 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, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company or holder of a capital markets services licence, as the case may be, in Singapore; or”;

- (e) by deleting the definition of “closed-end fund” and substituting the following definition:

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

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

(i) which is a trust;

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

(iii) all or any units of which are listed for quotation on a securities exchange; or

- (b) an arrangement referred to in paragraph (a) of that definition which is, or which belongs to a class or description of arrangements which is, specified by the Authority, by notification published in the *Gazette*, to be an arrangement that is not a closed-end fund, or a class or description

of arrangements that are not closed-end funds, as the case may be;”;

- (f) by deleting the words “, in relation to a futures contract,” in the definition of “commodity”;
- (g) by deleting the words “or a designated clearing house” in paragraph (b) of the definition of “customer” and substituting the words “, an approved clearing house or a recognised clearing house”;
- (h) by inserting, immediately after the definition of “derivative”, the following definition:

“ “derivatives contract” —

(a) means any of the following (not being any securities or any futures contract):

- (i) a forward contract;
- (ii) an option contract;
- (iii) a swap contract;
- (iv) any contract, arrangement or transaction that is, or that belongs to a class of contracts, arrangements or transactions that is, prescribed by the Authority by regulations made under section 341 for the purposes of this sub-paragraph; but

(b) does not include any contract, arrangement or transaction that is, or that belongs to a class of contracts, arrangements or transactions that is, prescribed by the Authority by regulations made under section 341 for the purposes of this paragraph;”;

- (i) by deleting the definition of “designated clearing house”;

(j) by deleting the definition of “financial instrument” and substituting the following definition:

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

(k) by inserting, immediately after the definition of “foreign exchange trading”, the following definition:

““forward contract” —

(a) means a contract under which one party agrees to transfer title to a specified underlying thing, or a specified quantity of a specified underlying thing, to another party at a specified future time and at a specified price payable at that time, whether or not there is any intention —

(i) to effect an actual delivery of the underlying thing;

(ii) to effect a settlement of any difference in the price or value of the underlying thing or, if the contract relates to 2 or more underlying things, of any difference in the price of one or more of the underlying things; or

(iii) to effect a settlement determined with reference to the underlying thing or, if the contract relates to 2 or more underlying things, determined with reference to one

or more of the underlying things;
but

(b) does not include a futures contract;”;

(l) by inserting, immediately after the definition of “leveraged foreign exchange trading”, the following definitions:

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

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

(m) by deleting the definition of “member” and substituting the following definition:

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

(n) by inserting, immediately after the definition of “officer”, the following definition:

““option contract” —

(a) means a contract providing for an option to acquire or dispose of a specified underlying thing, or a specified quantity of a specified underlying thing, whether or not there is any intention —

- (i) to effect an actual delivery of the underlying thing;
 - (ii) to effect a settlement of any difference in the price or value of the underlying thing or, if the contract relates to 2 or more underlying things, of any difference in the price or value of one or more of the underlying things; or
 - (iii) to effect a settlement determined with reference to the underlying thing or, if the contract relates to 2 or more underlying things, determined with reference to one or more of the underlying things; but
- (b) does not include any securities;”;
- (o) by deleting the word “respectively” in paragraph (a) of the definition of “participant” and substituting the words “as the case may be”;
- (p) by inserting, immediately after paragraph (a) of the definition of “participant”, the following paragraph:
- “(aa) for the purposes of Part IIA, a person who may participate in one or more of the services provided by a licensed trade repository or licensed foreign trade repository, in its capacity as a licensed trade repository or licensed foreign trade repository, as the case may be;”;
- (q) by deleting paragraph (b) of the definition of “participant” and substituting the following paragraph:
- “(b) for the purposes of Part III, a person who, under the business rules of an approved clearing house or a recognised clearing house, may participate

in one or more of the services provided by the approved clearing house or recognised clearing house, in its capacity as an approved clearing house or a recognised clearing house, as the case may be; or”;

(*r*) by deleting the definition of “principal” and substituting the following definition:

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

(*s*) by inserting, immediately after the definition of “recognised business trust”, the following definition:

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

(*t*) by inserting, immediately after the definition of “substantial unitholder”, the following definition:

“ “swap contract” —

(*a*) means a contract for differences, or a 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 one or more underlying things;

(ii) the value or price of any group of underlying things; or

(iii) an index of one or more underlying things; but

(*b*) does not include any securities;”;

(u) by deleting the definition of “transaction information” and substituting the following definition:

““transaction information” means information relating to —

- (a) offers or invitations to enter into, purchase, sell, or exchange securities, futures contracts or derivatives contracts;
 - (b) executed transactions in securities, futures contracts or derivatives contracts;
 - (c) transactions cleared or settled by an approved clearing house or a recognised clearing house; or
 - (d) transactions reported to a licensed trade repository or licensed foreign trade repository;”;
- (v) by inserting, immediately before the definition of “unit”, the following definition:

““underlying thing”, in relation to a forward contract, an option contract or a swap contract —

(a) means —

- (i) a commodity;
- (ii) the credit of any person; or
- (iii) any arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by the Authority by regulations made under section 341 for the purposes of this sub-paragraph; but

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- (b) does not include any arrangement, event, index, intangible property, tangible property or transaction that is, or that belongs to a class of arrangements, events, indices, intangible properties, tangible properties or transactions that is, prescribed by the Authority by regulations made under section 341 for the purposes of this paragraph;”; and
- (w) by deleting the definition of “user” and substituting the following definition:
- “ “user” means —
- (a) in relation to an approved exchange, an approved clearing house or a recognised clearing house, a person who is —
- (i) a member of the approved exchange, approved clearing house or recognised clearing house; or
- (ii) a customer of a member of the approved exchange, approved clearing house or recognised clearing house; or
- (b) in relation to a licensed trade repository or a licensed foreign trade repository, a person who is —
- (i) a participant of the licensed trade repository or licensed foreign trade repository; or
- (ii) a client of a participant of the licensed trade repository or licensed foreign trade repository;”.

Amendment of section 38

4. Section 38 of the principal Act is amended by deleting paragraph (b).

Amendment of section 46

5. Section 46 of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

“(3) It shall not be necessary to publish any direction issued under subsection (1) in the *Gazette*.”.

New Part IIA

6. The principal Act is amended by inserting, immediately after section 46, the following Part:

“PART IIA

TRADE REPOSITORIES

Objectives of this Part

46A. The objectives of this Part are —

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

Interpretation of this Part

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

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

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

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

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

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

Division 1 — Licensing of Trade Repositories

Holding out as licensed trade repository or licensed foreign trade repository

46C.—(1) No person shall hold himself out —

- (a) as a licensed trade repository, unless he has in force a trade repository licence granted by the Authority under section 46E(1); or
- (b) as a licensed foreign trade repository, unless he has in force a foreign trade repository licence granted by the Authority under section 46E(2).

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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.

Application for licence

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

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

- (3) An application under subsection (1) or (2) 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.
- (4) The Authority may require an applicant to furnish the Authority with such information or documents as the Authority considers necessary in relation to the application.

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

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

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

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

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

(4) 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 the Authority may think fit.

(5) A licensed trade repository or licensed foreign trade repository shall, for the duration of the licence, satisfy every

condition or restriction that may be imposed on it under subsection (3) or (4).

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

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

- (a) whether adequate arrangements exist for co-operation between the Authority and the primary financial services regulatory authority responsible for the supervision of the foreign trade repository in the country or territory in which the head office or principal place of business of the foreign trade repository is situated; and
- (b) whether the foreign trade repository is, in the country or territory in which the head office or principal place of business is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 46A are achieved, to the requirements and supervision to which licensed trade repositories are subject under this Act.

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

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

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

- (a) the corporation has not provided the Authority with such information as the Authority may require, relating to —
 - (i) the corporation or any person employed by or associated with the corporation for the purposes of the corporation's business or operations; or
 - (ii) any circumstances likely to affect the corporation's manner of conducting business or operations;
- (b) any information or document provided by the corporation to the Authority is false or misleading;
- (c) the corporation or a substantial shareholder of the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (d) execution against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (e) a receiver, a receiver and manager, a judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;
- (f) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder, as the case may be, being a compromise or scheme of arrangement that is still in operation;
- (g) the corporation, a substantial shareholder of the corporation or any officer of the corporation —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 6 of the Securities and Futures (Amendment) Act 2012, involving fraud or dishonesty or the

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- conviction for which involved a finding that the corporation, shareholder or officer, as the case may be, had acted fraudulently or dishonestly; or
- (ii) has been convicted of an offence under this Act committed before, on or after the date of commencement of section 6 of the Securities and Futures (Amendment) Act 2012;
- (h) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any licensed trade repository or licensed foreign trade repository;
 - (i) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;
 - (j) the Authority has reason to believe that the corporation may not be able to act in the best interests of its participants, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;
 - (k) the Authority is not satisfied as to —
 - (i) the financial standing of the corporation or any of its substantial shareholders; or
 - (ii) the manner in which the business of the corporation is to be conducted, or the operations of the corporation are to be conducted;
 - (l) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business or operations which the corporation may carry on or conduct in connection with the establishment or operation of any licensed trade repository or licensed foreign trade repository;

- (m) there are other circumstances which are likely to —
 - (i) lead to the improper conduct of business or operations by the corporation or any of its officers, employees or substantial shareholders; or
 - (ii) reflect discredit on the manner of conducting the business or operations of the corporation or any of its substantial shareholders;
- (n) the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a safe and efficient trade repository; or
- (o) the Authority is of the opinion that it would be contrary to the interests of the public to grant the corporation a trade repository licence or foreign trade repository licence.

(10) Subject to subsection (11), the Authority shall not refuse to grant a corporation a trade repository licence or foreign trade repository licence under subsection (9) without giving the corporation an opportunity to be heard.

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

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 6 of the Securities and Futures (Amendment) Act 2012, involving fraud or dishonesty or the

conviction for which involved a finding that it had acted fraudulently or dishonestly.

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

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

(14) Any licensed trade repository or licensed foreign trade repository which contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

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

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

(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.

Cancellation of trade repository licence or foreign trade repository licence

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

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

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

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

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

- (a) there exists at any time a ground under section 46E(6) or (9) on which the Authority may refuse an application;
- (b) the corporation does not commence operating as a licensed trade repository or licensed foreign trade repository, as the case may be, within 12 months after the date on which it was granted the trade repository licence or foreign trade repository licence, as the case may be;
- (c) the corporation ceases to operate as a trade repository;
- (d) the corporation contravenes —
 - (i) any condition or restriction applicable in respect of its trade repository licence or foreign trade repository licence, as the case may be;
 - (ii) any direction issued to it by the Authority under this Act; or
 - (iii) any provision in this Act;
- (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.

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

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

(a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

(b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;

(c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 6 of the Securities and Futures (Amendment) Act 2012, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

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

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

(b) it has ceased to operate as a trade repository under a direction issued by the Authority under section 46ZK.

(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.

(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.

(7) The Minister may, when deciding an appeal under subsection (5), 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.

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

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

Division 2 — Regulation of Licensed Trade Repositories

Division 2 — Obligations of licensed trade repositories

General obligations

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

- (a) shall operate in a safe and efficient manner in its capacity as a trade repository;
- (b) shall manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, shall not act contrary to the interests of the public, having particular regard to the interests of the investing public;

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- (d) shall ensure that access for participation in the licensed trade repository is subject to criteria that are fair and objective, and that are designed to ensure the safe and efficient functioning of the licensed trade repository and to protect the interests of the investing public;
 - (e) shall maintain business rules that make satisfactory provision for the licensed trade repository to be operated in a safe and efficient manner;
 - (f) shall enforce compliance by its participants with its business rules;
 - (g) shall have sufficient financial, human and system resources —
 - (i) to operate in a safe and efficient manner in its capacity as a trade repository;
 - (ii) to meet contingencies or disasters; and
 - (iii) to provide adequate security arrangements;
 - (h) shall ensure that the Authority is provided with access to all information on transactions reported to the licensed trade repository;
 - (i) shall maintain governance arrangements that are adequate for the licensed trade repository to be operated in a safe and efficient manner; and
 - (j) shall ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

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

Obligation to manage risks prudently

46J. Without prejudice to the generality of section 46I(1)(b), a licensed trade repository shall —

- (a) ensure that the systems and controls concerning the assessment and management of risks to the licensed

trade repository are adequate and appropriate for the scale and nature of its operations; and

- (b) have adequate arrangements, processes, mechanisms or services to collect and maintain information on transactions reported to the licensed trade repository.

Obligation to notify Authority of certain matters

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

- (a) any material change to the information provided by the licensed trade repository in its application under section 46D(1);
- (b) the carrying on of any business (referred to in this section as a proscribed business) by the licensed trade repository that is —
 - (i) not the business of operating as a trade repository;
 - (ii) not incidental to operating as a trade repository;
or
 - (iii) not such business, or within such class of businesses, as the Authority may prescribe;
- (c) the acquisition by the licensed trade repository of a substantial shareholding in a corporation (referred to in this section as a proscribed corporation) which carries on any business that is —
 - (i) not the business of operating as a trade repository;
 - (ii) not incidental to operating as a trade repository;
or
 - (iii) not such business, or within such class of businesses, as the Authority may prescribe;
- (d) the licensed trade repository becoming aware of any financial irregularity or other matter which in its opinion

may affect its ability to discharge its financial obligations;

- (e) the licensed trade repository reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a participant of the licensed trade repository;
- (f) any other matter that the Authority may —
 - (i) prescribe by regulations made under section 46ZJ for the purposes of this paragraph; or
 - (ii) specify by notice in writing to the licensed trade repository in any particular case.

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

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

(3) A licensed trade repository shall comply with every direction issued to it under subsection (2), notwithstanding anything to the contrary in the Companies Act (Cap. 50) or any other law.

Obligation to maintain proper records

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

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

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

Obligation to submit periodic reports

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

Obligation to assist Authority

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

- (a) the furnishing of such returns as the Authority may require for the proper administration of this Act; and
- (b) the provision of —
 - (i) such books and information as the Authority may require for the proper administration of this Act, being books and information —
 - (A) relating to the business or operations of the licensed trade repository; or

(B) in respect of any transaction or class of transactions reported to the licensed trade repository; and

(ii) such other information as the Authority may require for the proper administration of this Act.

Obligation to maintain confidentiality

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

(a) comes to the knowledge of the licensed trade repository or any of its officers or employees; or

(b) is in the possession of the licensed trade repository or any of its officers or employees.

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

(a) the disclosure of user information or transaction information for such purposes, or in such circumstances, as the Authority may prescribe;

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

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

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

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

Penalties under this Subdivision

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

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

46Q.—(1) Without limiting the generality of sections 46I and 46ZJ —

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

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

(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 business rule or by any other notice issued by or on behalf of the licensed trade repository.

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

Business rules of licensed trade repositories have effect as contract

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

(2) The licensed trade repository 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 licensed trade repository or participant, as the case may be.

Power of court to order observance or enforcement of business rules

46S.—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a licensed trade repository fails to do so, the High Court may, on the application of the Authority, the licensed trade repository 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.

(2) In this section, “person” includes a licensed trade repository.

(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).

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

46T. Any failure by a licensed trade repository to comply with this Act or its business rules in relation to a matter 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.

Subdivision (3) — Matters requiring approval of Authority

Control of substantial shareholding in licensed trade repository

46U.—(1) No person shall enter into any agreement to acquire shares in a licensed trade repository, being an agreement by virtue of which he would, if the agreement had been carried out, become a substantial shareholder of the licensed trade repository, without first obtaining the approval of the Authority to enter into the agreement.

(2) No person shall become either of the following without first obtaining the approval of the Authority:

- (a) a 12% controller of a licensed trade repository;
- (b) a 20% controller of a licensed trade repository.

(3) In subsection (2) —

“12% controller”, in relation to a licensed trade repository, means a person, not being a 20% controller, who alone or together with his associates —

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

“20% controller”, in relation to a licensed trade repository, means a person who, alone or together with his associates —

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

(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 licensed trade repository 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 licensed trade repository; and
- (c) a person, *A*, is an associate of another person, *B*, if —
- (i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, 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*, whether 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*, whether 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 licensed trade repository.

(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.

(6) Without prejudice to subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by notice in writing, direct the transfer or disposal of all or any of the shares of a licensed trade repository in which a substantial shareholder, 12% controller or 20% controller of the licensed trade repository has an interest.

(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 or the memorandum or articles of

association or other constituent document or documents of the licensed trade repository —

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

(8) Any issue of shares by a licensed trade repository 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 licensed trade repository, upon which the licensed trade repository shall return to the person any payment received from the person in respect of those shares.

(9) Any payment made by a licensed trade repository 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 licensed trade repository.

(10) Without prejudice to sections 46ZL(1) and 337(1), the Authority may, by regulations made under section 46ZJ, exempt all or any of the following from subsection (1) or (2), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

- (a) any person or class of persons;
- (b) any class or description of shares or interests in shares.

(11) Without prejudice to sections 46ZL(2) and 337(3) and (4), the Authority may, by notice in writing, exempt any person,

shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by notice in writing.

(12) It shall not be necessary to publish any exemption granted under subsection (11) in the *Gazette*.

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

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

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

46V.—(1) No licensed trade repository shall appoint a person as its chairman, chief executive officer or director unless the licensed trade repository has obtained the approval of the Authority.

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

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

(4) Without prejudice to the generality of section 46ZJ and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

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

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

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 6 of the Securities and Futures (Amendment) Act 2012 —
 - (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.

(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.

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

(9) The Authority may make regulations under section 46ZJ relating to the composition and duties of the board of directors or any committee of a licensed trade repository.

(10) In this section, “committee” includes any committee of directors, disciplinary committee or appeals committee of a licensed trade repository, and any body responsible for disciplinary action against a participant of a licensed trade repository.

(11) Without prejudice to sections 46ZL(1) and 337(1), the Authority may, by regulations made under section 46ZJ, exempt any licensed trade repository or class of licensed trade repositories from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(12) Without prejudice to sections 46ZL(2) and 337(3) and (4), the Authority may, by notice in writing, exempt any licensed trade repository from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by notice in writing.

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

(14) Subject to subsections (11) and (12), any licensed trade repository which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Subdivision (4) — Powers of Authority

Power of Authority to appoint adviser

46W.—(1) The Authority may appoint one or more persons as statutory advisers, on such terms and conditions as the Authority may specify, to advise a licensed trade repository on the proper management of such business or operations of the licensed trade repository as the Authority may determine, where —

- (a) the licensed trade repository informs the Authority that it is or is likely to become insolvent, 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) the licensed trade repository becomes unable to meet its obligations, is insolvent, or suspends payments;
- (c) the Authority is of the opinion that the licensed trade repository —
 - (i) is carrying on its business in a manner likely to be detrimental to the objectives specified in section 46A;
 - (ii) is or is likely to become insolvent, is or is likely to become unable to meet its obligations, or is about to suspend payments; or
 - (iii) has contravened —
 - (A) any condition or restriction applicable in respect of its trade repository licence;
 - (B) any direction issued to it by the Authority under this Act; or
 - (C) any provision in this Act; or
- (d) the Authority 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 to do so.

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

- (a) vary or revoke any appointment made by the Authority under subsection (1), on such terms and conditions as the Authority 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 liability shall be incurred by 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 licensed trade repository to a statutory adviser appointed in relation to the licensed trade repository, whether or not the appointment has been terminated.

(5) A licensed trade repository shall reimburse the Authority for any remuneration and expenses paid by the Authority to a statutory adviser that is payable by the licensed trade repository to the statutory adviser.

Additional powers of Authority in respect of auditors

46X.—(1) If an auditor of a licensed trade repository, in the course of the performance of his duties, becomes aware of any matter or irregularity referred to in the following paragraphs, he shall immediately send to the Authority a written report of that matter or irregularity:

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the licensed trade repository to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;
- (c) any irregularity that has or may have a material effect upon the accounts of the licensed trade repository, including any irregularity that affects or jeopardises, or may affect or jeopardise, the funds or property of investors.

(2) An auditor of a licensed trade repository 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).

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

(4) The Authority may impose all or any of the following duties on an auditor of a licensed trade repository, and the auditor shall carry out the duties so imposed:

- (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 licensed trade repository;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter arising out of his audit, examination or establishment of procedure referred to in paragraph (b) or (c).

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

Emergency powers of Authority

46Y.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may direct by notice in writing a licensed trade repository to take such action as the Authority considers necessary to maintain or restore the safe and efficient operation of the licensed trade repository.

(2) Where a licensed trade repository fails to comply with any direction of the Authority under subsection (1) within such time

as is specified by the Authority, the Authority may take such action as the Authority thinks fit to maintain or restore the safe and efficient operation of the licensed trade repository.

- (3) In this section, “emergency” includes —
- (a) any threatened or actual market manipulation;
 - (b) any act of any government affecting any commodity or securities;
 - (c) any major market disturbance which prevents a market from accurately reflecting the forces of supply and demand for such commodity or securities; or
 - (d) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

(4) The Authority may modify any action taken by a licensed trade repository under subsection (1), including the setting aside of that action.

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

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

(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, or by a licensed trade repository, under this section, and any such modified action shall have effect from the date of the decision of the Minister.

(8) Any licensed trade repository which fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further

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

Power of Authority to remove officers of licensed trade repository

46Z.—(1) Where the Authority is satisfied that any of the following applies to an officer of a licensed trade repository, the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing direct the licensed trade repository to remove the officer from his office or employment, and the licensed trade repository shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50) or anything in any other law or in the memorandum or articles of association or other constituent document or documents of the licensed trade repository:

- (a) the officer has wilfully contravened, or wilfully caused the licensed trade repository to contravene, this Act or the business rules of the licensed trade repository;
- (b) the officer has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules of the licensed trade repository, by the licensed trade repository, by a participant of the licensed trade repository or by a person associated with that participant;
- (c) the officer has failed to discharge the duties or functions of his office or employment;
- (d) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) the officer has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) the officer has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;

(g) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 6 of the Securities and Futures (Amendment) Act 2012, involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly.

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of a licensed trade repository has failed to discharge the duties or functions of his 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.

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

(4) The Authority may direct a licensed trade repository to remove an officer from his office or employment under subsection (1) on any of the following grounds without giving the licensed trade repository an opportunity to be heard:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 6 of the Securities and Futures (Amendment) Act 2012 —
 - (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.

(5) Where the Authority directs a licensed trade repository to remove an officer from his office or employment under

subsection (1), the Authority need not give that officer an opportunity to be heard.

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

(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.

(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.

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by a licensed trade repository in respect of any thing done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(10) Any licensed trade repository which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Subdivision (5) — Immunity

Immunity from criminal or civil liability

46ZA.—(1) No criminal or civil liability shall be incurred by a licensed trade repository, or by any person specified in subsection (2), for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or

purported discharge of the obligations of the licensed trade repository under this Act or under the business rules of the licensed trade repository.

(2) For the purposes of subsection (1), the specified person is any person acting on behalf of the licensed trade repository, including —

- (a) any director of the licensed trade repository; or
- (b) any member of any committee established by the licensed trade repository.

Division 3 — Regulation of Licensed Foreign Trade Repositories

General obligations

46ZB.—(1) A licensed foreign trade repository —

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

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- (i) to operate in a safe and efficient manner in its capacity as a trade repository;
 - (ii) to meet contingencies or disasters; and
 - (iii) to provide adequate security arrangements;
- (h) shall ensure that the Authority is provided with access to all information on transactions reported to the licensed foreign trade repository;
- (i) shall maintain governance arrangements that are adequate for the licensed foreign trade repository to be operated in a safe and efficient manner; and
- (j) shall ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

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

Obligation to manage risks prudently

46ZC. Without prejudice to the generality of section 46ZB(1)(b), a licensed foreign trade repository shall —

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

Obligation to notify Authority of certain matters

46ZD. A licensed foreign trade repository shall, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

- (a) any material change to the information provided by the licensed foreign trade repository in its application under section 46D(2);
- (b) the licensed foreign trade repository becoming aware of any financial irregularity or other matter which in its opinion may affect its ability to discharge its financial obligations;
- (c) any other matter that the Authority may —
 - (i) prescribe by regulations made under section 46ZJ for the purposes of this paragraph; or
 - (ii) specify by notice in writing to the licensed foreign trade repository in any particular case.

Obligation to maintain proper records

46ZE.—(1) A licensed foreign trade repository shall maintain a record of all transactions reported to the licensed foreign trade repository.

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

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

Obligation to submit periodic reports

46ZF. A licensed foreign trade repository shall submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

Obligation to assist Authority

46ZG. A licensed foreign trade repository shall provide such assistance to the Authority as the Authority may require for the

performance of the functions and duties of the Authority, including —

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

Obligation to maintain confidentiality

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

- (a) comes to the knowledge of the licensed foreign trade repository or any of its officers or employees; or
 - (b) is in the possession of the licensed foreign trade repository or any of its officers or employees.
- (2) Subsection (1) shall not apply to —
- (a) the disclosure of user information or transaction information for such purposes, or in such circumstances, as the Authority may prescribe;
 - (b) any disclosure of user information or transaction information which is authorised by the Authority to be disclosed or furnished; or

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

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

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

Penalties under this Division

46ZI. Any licensed foreign trade repository which contravenes section 46ZB(1), 46ZC, 46ZD, 46ZE(1), 46ZF, 46ZG or 46ZH(1) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Division 4 — General Powers of Authority

Power of Authority to make regulations

46ZJ.—(1) Without prejudice to section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to —

- (a) the grant of a trade repository licence or foreign trade repository licence;
- (b) the requirements applicable to a licensed trade repository or licensed foreign trade repository;
- (c) the measures that a licensed trade repository or licensed foreign trade repository shall adopt for the purposes of managing or mitigating risks;

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- (d) the maintenance of records of transactions reported to a licensed trade repository or licensed foreign trade repository; and
 - (e) the submission of reports by a licensed trade repository or licensed foreign trade repository.
- (2) Regulations made under this section may provide —
- (a) that a contravention of any specified provision thereof shall be an offence; and
 - (b) for a penalty not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, for a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

Power of Authority to issue directions

46ZK.—(1) The Authority may issue directions, whether of a general or specific nature, by notice in writing, to a licensed trade repository or licensed foreign trade repository, if the Authority thinks it necessary or expedient —

- (a) for ensuring the safe and efficient operation of the licensed trade repository or licensed foreign trade repository, or of licensed trade repositories or licensed foreign trade repositories in general;
- (b) for ensuring the integrity and stability of the capital markets or the financial system;
- (c) in the interests of the public or a section of the public or for the protection of investors;
- (d) for the effective administration of this Act; or
- (e) for ensuring compliance with any condition or restriction as may be imposed by the Authority under section 46E(3) or (4), 46K(2), 46U(5) or (10), 46V(11) or (12) or 46ZL(1) or (2), or such other obligations or

requirements under this Act or as may be prescribed by the Authority.

(2) Without prejudice to the generality of subsection (1), the Authority may issue directions, by notice in writing, to a licensed trade repository or licensed foreign trade repository —

- (a) with respect to the publication of any information relating to any transaction reported to the licensed trade repository or licensed foreign trade repository, as the case may be; or
- (b) for ensuring that the Authority and such other entities as the Authority may specify are provided with access to any information on any transaction reported to the licensed trade repository or licensed foreign trade repository.

(3) A licensed trade repository or licensed foreign trade repository shall comply with every direction issued to it under subsection (1) or (2).

(4) Any licensed trade repository or licensed foreign trade repository which, without reasonable excuse, contravenes a direction issued to it under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(5) It shall not be necessary to publish any direction issued under subsection (1) or (2) in the *Gazette*.

Power of Authority to exempt licensed trade repository or licensed foreign trade repository from provisions of this Part

46ZL.—(1) Without prejudice to section 337(1), the Authority may, by regulations made under section 46ZJ, exempt any licensed trade repository, licensed foreign trade repository, or class of licensed trade repositories or licensed foreign trade repositories from any provision of this Part, subject to such

conditions or restrictions as the Authority may prescribe in those regulations.

(2) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any licensed trade repository or licensed foreign trade repository from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by notice in writing, if the Authority is satisfied that the non-compliance by that licensed trade repository or licensed foreign trade repository with that provision will not detract from the objectives specified in section 46A.

(3) It shall not be necessary to publish any exemption granted under subsection (2) in the *Gazette*.”.

Repeal and re-enactment of Part III

7. Part III of the principal Act is repealed and the following Part substituted therefor:

“PART III

CLEARING FACILITIES

Objectives of this Part

47. The objectives of this Part are —

- (a) to promote safe and efficient clearing facilities; and
- (b) to reduce systemic risk.

Interpretation of this Part

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

“default proceedings” means any proceedings or other action taken by an approved clearing house or a recognised clearing house under its default rules;

“default rules”, in relation to an approved clearing house or a recognised clearing house, means the business rules of the approved clearing house or recognised clearing house which provide for the taking of proceedings or other action if a participant has failed, or appears to be unable or to be likely to become unable, to meet his

obligations for any unsettled or open market contract to which he is a party;

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

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

“market charge” means a security interest, whether fixed or floating, granted in favour of an approved clearing house, or a recognised clearing house, over market collateral;

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

“market contract” means —

(a) a contract subject to the business rules of an approved clearing house or a recognised clearing house, that is entered into between the approved clearing house or recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the approved clearing house or recognised clearing house; or

(b) a transaction which is being cleared or settled using the clearing facility of an approved clearing house or a recognised clearing house, and in accordance with the business rules of the approved clearing house or recognised clearing house, whether or not

a novation referred to in paragraph (a) is to take place;

“property”, in relation to a market charge or market collateral, means —

- (a) any money, letter of credit, banker’s draft, certified cheque, guarantee or other similar instrument;
- (b) any securities;
- (c) any futures contract, derivatives contract or other similar financial contract, arrangement or transaction; or
- (d) any other asset of value acceptable to an approved clearing house or a recognised clearing house;

“relevant office holder” means —

- (a) the Official Assignee exercising his powers under the Bankruptcy Act (Cap. 20);
- (b) a person acting in relation to a corporation as the liquidator, the provisional liquidator, the receiver, the receiver and manager or the judicial manager of the corporation, or acting in an equivalent capacity in relation to a corporation; or
- (c) a person acting in relation to an individual as the trustee in bankruptcy, or the interim receiver of the property, of the individual, or acting in an equivalent capacity in relation to an individual;

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

“Singapore corporation” means a corporation which is incorporated in Singapore.

(2) Where a charge is granted partly for the purpose specified in the definition of “market charge” in subsection (1) and partly for any other purpose or purposes, the charge shall be treated as a market charge under this Part insofar as it has effect for that specified purpose.

(3) Where any collateral is granted partly for the purpose specified in the definition of “market collateral” in subsection (1) and partly for any other purpose or purposes, the collateral shall be treated as market collateral under this Part insofar as it has been provided for that specified purpose.

(4) Any references in this Part to the law of insolvency is a reference 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).

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

Division 1 — Establishment of Clearing Facilities

Requirement for approval or recognition

49.—(1) No person shall establish or operate a clearing facility, or hold himself out as operating a clearing facility, unless the person is —

- (a) an approved clearing house; or
- (b) a recognised clearing house.

(2) No person shall hold himself out —

- (a) as an approved clearing house, unless he is an approved clearing house; or
- (b) as a recognised clearing house, unless he is a recognised clearing house.

(3) Except with the written approval of the Authority, no person, other than an approved clearing house or a recognised

clearing house, shall take or use, or have attached to or exhibited at any place —

- (a) the title or description “securities clearing house” or “futures clearing house” in any language; or
- (b) any title or description which resembles a title or description referred to in paragraph (a).

(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.

(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.

(6) Without prejudice to section 337(1), the Authority may, by regulations made under section 81Q, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(7) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by notice in writing, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 47.

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

(9) The Authority may, at any time, by notice in writing —

- (a) add to the conditions and restrictions referred to in subsection (7); or

(b) vary or revoke any condition or restriction referred to in that subsection.

(10) Every corporation that is granted an exemption under subsection (6) shall satisfy every condition or restriction imposed on it under that subsection.

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

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

Application for approval or recognition

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

(a) approved as an approved clearing house; or

(b) recognised as a recognised clearing house.

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

(3) An application under subsection (1) or (2) 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.

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

Power of Authority to approve or recognise clearing house

51.—(1) Where a Singapore corporation has made an application under section 50(1), the Authority may —

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

(2) Where a foreign corporation has made an application under section 50(2), the Authority may recognise the corporation as a recognised clearing house.

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

- (a) treat an application under section 50(1)(a) as an application under section 50(1)(b), if the Authority is of the opinion that the applicant would be more appropriately regulated as a recognised clearing house; or
- (b) treat an application under section 50(1)(b) as an application under section 50(1)(a), if the Authority is of the opinion that the applicant would be more appropriately regulated as an approved clearing house.

(4) The Authority may approve a Singapore corporation as an approved clearing house under subsection (1)(a), recognise a Singapore corporation as a recognised clearing house under subsection (1)(b) or recognise a foreign corporation as a recognised clearing house under subsection (2), subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing, including conditions or restrictions, either of a general or specific nature, relating to —

- (a) the activities that the corporation may undertake;

- (b) the products that may be cleared or settled by any clearing facility established or operated by the corporation; and
- (c) the nature of the investors or participants who may use or have an interest in any clearing facility established or operated by the corporation.

(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 the Authority may think fit.

(6) An approved clearing house or a recognised clearing house shall, for the duration of the approval or recognition, satisfy every condition or restriction that may be imposed on it under subsection (4) or (5).

(7) The Authority shall not approve an applicant as an approved clearing house, or recognise an applicant as a recognised clearing house, unless the applicant meets such requirements, including minimum financial requirements, as the Authority may prescribe, either generally or specifically.

(8) The Authority may refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, if —

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

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- (d) execution against the corporation or a substantial shareholder of the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;
 - (e) a receiver, a receiver and manager, a judicial manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation or a substantial shareholder of the corporation;
 - (f) the corporation or a substantial shareholder of the corporation has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the creditors of the corporation or shareholder, as the case may be, being a compromise or scheme of arrangement that is still in operation;
 - (g) the corporation, a substantial shareholder of the corporation or any officer of the corporation —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012, involving fraud or dishonesty or the conviction for which involved a finding that the corporation, shareholder or officer, as the case may be, had acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act committed before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012;
 - (h) the Authority is not satisfied as to the educational or other qualifications or experience of the officers or employees of the corporation, having regard to the nature of the duties they are to perform in connection with the establishment or operation of any clearing facility;

- (i) the corporation fails to satisfy the Authority that the corporation is a fit and proper person or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (j) the Authority has reason to believe that the corporation may not be able to act in the best interests of investors or its members, participants or customers, having regard to the reputation, character, financial integrity and reliability of the corporation or its officers, employees or substantial shareholders;
- (k) the Authority is not satisfied as to —
 - (i) the financial standing of the corporation or any of its substantial shareholders; or
 - (ii) the manner in which the business of the corporation is to be conducted;
- (l) the Authority is not satisfied as to the record of past performance or expertise of the corporation, having regard to the nature of the business which the corporation may carry on in connection with the establishment or operation of any clearing facility;
- (m) there are other circumstances which are likely to —
 - (i) lead to the improper conduct of business by the corporation or any of its officers, employees or substantial shareholders; or
 - (ii) reflect discredit on the manner of conducting the business of the corporation or any of its substantial shareholders;
- (n) in the case of any clearing facility that the corporation operates, the Authority has reason to believe that the corporation, or any of its officers or employees, will not operate a safe and efficient clearing facility;
- (o) the corporation does not satisfy the criteria prescribed under section 52 to be approved as an approved clearing

house or recognised as a recognised clearing house, as the case may be; or

- (p) the Authority is of the opinion that it would be contrary to the interests of the public to approve or recognise the corporation.

(9) Subject to subsection (10), the Authority shall not refuse to approve a Singapore corporation as an approved clearing house, or recognise a Singapore corporation or foreign corporation as a recognised clearing house, under subsection (8) without giving the corporation an opportunity to be heard.

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

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
- (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

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

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

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

General criteria to be taken into account by Authority

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

- (a) whether a Singapore corporation referred to in section 50(1) or 54(1) should be approved as an approved clearing house or recognised as a recognised clearing house;
- (b) whether a foreign corporation referred to in section 50(2) should be recognised as a recognised clearing house; and
- (c) whether an approved clearing house or a recognised clearing house that is subject to a review by the Authority under section 54(4) should be approved as an approved clearing house or recognised as a recognised clearing house.

(2) Without prejudice to section 51 and subsection (1), the Authority may, for the purposes of deciding whether to recognise a foreign corporation as a recognised clearing house under section 51(2), have regard, in addition to any requirements prescribed under section 51(7) and any criteria prescribed under subsection (1), to —

- (a) whether adequate arrangements exist for co-operation between the Authority and the primary financial services

regulatory authority responsible for the supervision of the foreign corporation in the country or territory in which the head office or principal place of business of the foreign corporation is situated; and

- (b) whether the foreign corporation is, in the country or territory in which the head office or principal place of business of the foreign corporation is situated, subject to requirements and supervision comparable, in the degree to which the objectives specified in section 47 are achieved, to the requirements and supervision to which approved clearing houses and recognised clearing houses are subject under this Act.

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

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

Annual fees payable by approved clearing house or recognised clearing house

53.—(1) Every approved clearing house and every recognised clearing house shall pay to the Authority such annual fees as may be prescribed in such manner as may be specified by the Authority.

(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.

Change in status

54.—(1) A Singapore corporation which is an approved clearing house or a recognised clearing house may apply to the Authority to change its status in the manner referred to in subsection (5).

(2) An application 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.

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

(4) The Authority may, from time to time, on its own initiative, review the status of a Singapore corporation that is an approved clearing house or a recognised clearing house in accordance with the requirements prescribed under section 51(7) and the criteria prescribed under section 52(1).

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

- (a) if the corporation is an approved clearing house, withdraw the approval as such and recognise the corporation as a recognised clearing house under section 51(1)(b);
- (b) if the corporation is a recognised clearing house, withdraw the recognition as such and approve the corporation as an approved clearing house under section 51(1)(a); or
- (c) make no change to the status of the corporation as an approved clearing house or a recognised clearing house.

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

(7) Where a review of the status of a Singapore corporation is conducted by the Authority on its own initiative under

subsection (4), the Authority shall not exercise its powers under subsection (5)(a) or (b) without giving the corporation an opportunity to be heard.

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

Cancellation of approval or recognition

55.—(1) An approved clearing house or a recognised clearing house which intends to cease operating its clearing facility or, where it operates more than one clearing facility, all of its clearing facilities, may apply to the Authority to cancel its approval as an approved clearing house or recognition as a recognised clearing house, as the case may be.

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

(3) The Authority may cancel the approval of an approved clearing house, or the recognition of a recognised clearing house, on such application if the Authority is satisfied that —

- (a) the approved clearing house or recognised clearing house has ceased operating its clearing facility or all of its clearing facilities, as the case may be; and
- (b) the cancellation of the approval or recognition, as the case may be, will not detract from the objectives specified in section 47.

Power of Authority to revoke approval and recognition

56.—(1) The Authority may revoke any approval of a Singapore corporation as an approved clearing house under section 51(1)(a), any recognition of a Singapore corporation as a recognised clearing house under section 51(1)(b) or any recognition of a foreign corporation as a recognised clearing house under section 51(2), if —

- (a) there exists at any time a ground under section 51(7) or (8) on which the Authority may refuse an application;
- (b) the corporation does not commence operating its clearing facility, or, where it operates more than one clearing facility, all of its clearing facilities, within 12 months after the date on which it was granted the approval under section 51(1)(a) or was recognised under section 51(1)(b) or (2), as the case may be;
- (c) the corporation ceases to operate its clearing facility or, where it operates more than one clearing facility, all of its clearing facilities;
- (d) the corporation contravenes —
 - (i) any condition or restriction applicable in respect of its approval or recognition, as the case may be;
 - (ii) any direction issued to it by the Authority under this Act; or
 - (iii) any provision in this Act;
- (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.

(2) Subject to subsection (3), the Authority shall not revoke under subsection (1) any approval under section 51(1)(a) or recognition under section 51(1)(b) or (2) that was granted to a corporation without giving the corporation an opportunity to be heard.

(3) The Authority may revoke an approval under section 51(1)(a), or a recognition under section 51(1)(b) or (2), that was granted to a corporation on any of the following grounds without giving the corporation an opportunity to be heard:

- (a) the corporation is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

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- (b) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to, or in respect of, any property of the corporation;
 - (c) the corporation has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly.

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

- (a) it has ceased to operate the clearing facility for more than 30 days, unless it has obtained the prior approval of the Authority to do so; or
- (b) it has ceased to operate the clearing facility under a direction issued by the Authority under section 81R.

(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.

(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.

(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.

(8) Any revocation under subsection (1) or (3) of the approval or recognition of a corporation under section 51(1) or (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 corporation, whether the agreement, transaction or arrangement was entered into before, on or after the revocation of the approval or recognition; or
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(9) The Authority shall give notice in the *Gazette* of any revocation under subsection (1) or (3) of any approval or recognition of a corporation under section 51(1) or (2).

Division 2 — Regulation of Approved Clearing Houses

Division 2 — Obligations of approved clearing houses

General obligations

- 57.**—(1) An approved clearing house —
- (a) shall operate a safe and efficient clearing facility;
 - (b) shall manage any risks associated with its business and operations prudently;
 - (c) in discharging its obligations under this Act, shall not act contrary to the interests of the public, having particular regard to the interests of the investing public;
 - (d) shall 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) shall maintain business rules that make satisfactory provision for —
 - (i) the clearing facility to be operated in a safe and efficient manner; and

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- (ii) the proper regulation and supervision of its members;
 - (f) shall enforce compliance by its members with its business rules;
 - (g) shall have sufficient financial, human and system resources —
 - (i) to operate a safe and efficient clearing facility;
 - (ii) to meet contingencies or disasters; and
 - (iii) to provide adequate security arrangements;
 - (h) shall maintain governance arrangements that are adequate for the clearing facility to be operated in a safe and efficient manner; and
 - (i) shall ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.
- (2) The obligations imposed on an approved clearing house under this Act shall apply to all facilities for clearing or settlement operated by the approved clearing house.
- (3) Notwithstanding subsection (2), the Authority may by notice in writing exempt any clearing facility operated by an approved clearing house from all or any of the provisions of this Act, if the Authority is satisfied that such exemption would not detract from the objectives specified in section 47.
- (4) It shall not be necessary to publish any exemption granted under subsection (3) in the *Gazette*.
- (5) In subsection (1)(g), “contingencies or disasters” includes technical disruptions occurring within automated systems.

Obligation to notify Authority of certain matters

58.—(1) An approved clearing house shall, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

- (a) any material change to the information provided by the approved clearing house in its application under section 50(1) or 54(1);
- (b) the carrying on of any business (referred to in this section as a proscribed business) by the approved clearing house that is —
 - (i) not the business of operating a clearing facility;
 - (ii) not incidental to operating a clearing facility; or
 - (iii) not such business, or within such class of businesses, as the Authority may prescribe;
- (c) the acquisition by the approved clearing house of a substantial shareholding in a corporation (referred to in this section as a proscribed corporation) which carries on any business that is —
 - (i) not the business of operating a clearing facility;
 - (ii) not incidental to operating a clearing facility; or
 - (iii) not such business, or within such class of businesses, as the Authority may prescribe;
- (d) the approved clearing house becoming aware of any financial irregularity or other matter which in its opinion —
 - (i) may affect its ability to discharge its financial obligations; or
 - (ii) may affect the ability of a member of the approved clearing house to meet its financial obligations to the approved clearing house;
- (e) the approved clearing house reprimanding, fining, suspending, expelling or otherwise taking disciplinary action against a member of the approved clearing house;
- (f) any other matter that the Authority may —
 - (i) prescribe by regulations made under section 81Q for the purposes of this paragraph; or

(ii) specify by notice in writing to the approved clearing house in any particular case.

(2) Without prejudice to the generality of section 81R(1), the Authority may, at any time after receiving a notice referred to in subsection (1), issue directions to the approved clearing house —

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

(i) to cease carrying on the proscribed business; or

(ii) to carry on the proscribed business subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81R(1); or

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

(i) to dispose of all or any part of its shareholding in the proscribed corporation within such time and subject to such conditions as the Authority considers appropriate; or

(ii) to exercise its rights relating to such shareholding, or to not exercise such rights, subject to such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any purpose referred to in section 81R(1).

(3) An approved clearing house shall comply with every direction issued to it under subsection (2) notwithstanding anything to the contrary in the Companies Act (Cap. 50) or any other law.

(4) An approved clearing house shall notify the Authority of any matter that the Authority may prescribe by regulations made under section 81Q for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

(5) An approved clearing house shall notify the Authority of any matter that the Authority may specify by notice in writing to the recognised clearing house, no later than such time as the Authority may specify in that notice.

Obligation to manage risks prudently, etc.

59.—(1) Without prejudice to the generality of section 57(1)(b), an approved 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 the approved clearing house 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 approved clearing house, and vary those limits only in a manner approved by the Authority; and
- (c) obtain the Authority's approval if the approved clearing house 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 approved clearing house.

(2) Nothing in subsection (1) shall preclude an approved 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 approved 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 an approved 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 approved clearing house

60.—(1) Without prejudice to sections 81Q and 341, the Authority may make regulations —

- (a) relating to how any money or assets deposited with or paid to an approved clearing house by its members, for or in relation to any contracts of the customers of those members, are to be held by the approved clearing house and, in particular, requiring any such money or assets to be deposited in trust accounts or custody accounts;
- (b) relating to the circumstances under which, and the purposes for which, the money or assets referred to in paragraph (a) may be used by the approved clearing house;
- (c) relating to how the approved clearing house may invest the money or assets referred to in paragraph (a); and
- (d) for any other purpose relating to the handling of the money and assets referred to in paragraph (a).

(2) Regulations made under this section may provide —

- (a) that a contravention of any specified provision thereof shall be an offence; and
- (b) for a penalty not exceeding a fine of \$200,000 and, in the case of a continuing offence, for a further penalty not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Obligation to maintain proper records

61.—(1) An approved clearing house shall maintain a record of all transactions effected through its clearing facility.

(2) The Authority may prescribe by regulations made under section 81Q —

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

Obligation to submit periodic reports

62. An approved clearing house shall submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

Obligation to assist Authority

63. An approved 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 —

- (a) the furnishing of such returns as the Authority may require for the proper administration of this Act; and
- (b) the provision of —
 - (i) such books and information as the Authority may require for the proper administration of this Act, being books and information —
 - (A) relating to the business of the approved clearing house; or
 - (B) in respect of any transaction or class of transactions cleared or settled by the approved clearing house; and
 - (ii) such other information as the Authority may require for the proper administration of this Act.

Obligation to maintain confidentiality

64.—(1) Subject to subsection (2), an approved clearing house and its officers and employees shall maintain, and aid in maintaining, confidentiality of all user information that —

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- (a) comes to the knowledge of the approved clearing house or any of its officers or employees; or
 - (b) is in the possession of the approved clearing house or any of its officers or employees.
- (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.
- (3) For the avoidance of doubt, nothing in this section shall be construed as preventing an approved clearing house from entering into a written agreement with a user which obliges the approved clearing house to maintain a higher degree of confidentiality than that specified in this section.

Penalties under this Subdivision

65. Any approved clearing house which contravenes section 57(1), 58(1) or (3), 59(1), 61(1), 62, 63 or 64(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Subdivision (2) — Rules of approved clearing houses

Business rules of approved clearing houses

66.—(1) Without limiting the generality of sections 57 and 81Q —

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

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

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

(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 business rule or by any other notice issued by or on behalf of the approved clearing house.

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

Business rules of approved clearing houses have effect as contract

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

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

(2) The approved 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 approved clearing house, issuer or participant, as the case may be.

(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 approved clearing house.

Power of court to order observance or enforcement of business rules

68.—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of an approved clearing house fails to do so, the High Court may, on the application of the Authority, the approved clearing house 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.

(2) In this section, “person” includes an approved clearing house.

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

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

69. Any failure by an approved clearing house to comply with this Act or its business rules in relation to a matter 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.

Subdivision (3) — Matters requiring approval of Authority

Control of substantial shareholding in approved clearing house

70.—(1) No person shall enter into any agreement to acquire shares in an approved clearing house, being an agreement by virtue of which he would, if the agreement had been carried out,

become a substantial shareholder of the approved clearing house, without first obtaining the approval of the Authority to enter into the agreement.

(2) No person shall become either of the following without first obtaining the approval of the Authority:

- (a) a 12% controller of an approved clearing house;
- (b) a 20% controller of an approved clearing house.

(3) In subsection (2) —

“12% controller”, in relation to an approved clearing house, means a person, not being a 20% controller, who alone or together with his associates —

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

“20% controller”, in relation to an approved clearing house, means a person who, alone or together with his associates —

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

(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;

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- (b) a reference to the control of a percentage of the votes in an approved 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 approved clearing house; and
- (c) a person, *A*, is an associate of another person, *B*, if —
- (i) *A* is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, 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*, whether 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*, whether 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 clearing house.

(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.

(6) Without prejudice to subsection (13), the Authority may, for the purposes of securing compliance with subsection (1) or (2) or any condition or restriction imposed under subsection (5), by notice in writing, direct the transfer or disposal of all or any of the shares of an approved clearing house in which a substantial shareholder, 12% controller or 20% controller of the approved clearing house has an interest.

(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 or the memorandum or articles of association or other constituent document or documents of the approved clearing house —

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

(8) Any issue of shares by an approved 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 approved clearing house, upon which the approved clearing house shall return to the person any payment received from the person in respect of those shares.

(9) Any payment made by an approved 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 approved clearing house.

(10) Without prejudice to sections 81SB(1) and 337(1), the Authority may, by regulations made under section 81Q, exempt all or any of the following from subsection (1) or (2), subject to such conditions or restrictions as the Authority may prescribe in those regulations:

(a) any person or class of persons;

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

(11) Without prejudice to sections 81SB(2) and 337(3) and (4), the Authority may, by notice in writing, exempt any person, shares or interests in shares from subsection (1) or (2), subject to such conditions or restrictions as the Authority may specify by notice in writing.

(12) It shall not be necessary to publish any exemption granted under subsection (11) in the *Gazette*.

(13) Any person who contravenes subsection (1) or (2), or any condition or restriction imposed by the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for

every day or part thereof during which the offence continues after conviction.

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

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

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

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

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

(4) Without prejudice to the generality of section 81Q and to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1) or (2), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

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

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

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012 —
 - (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.

(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.

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

(9) The Authority may make regulations under section 81Q relating to the composition and duties of the board of directors or any committee of an approved clearing house.

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

(11) Without prejudice to sections 81SB(1) and 337(1), the Authority may, by regulations made under section 81Q, exempt any approved clearing house or class of approved clearing houses from complying with subsection (1) or (8), subject to

such conditions or restrictions as the Authority may prescribe in those regulations.

(12) Without prejudice to sections 81SB(2) and 337(3) and (4), the Authority may, by notice in writing, exempt any approved clearing house from complying with subsection (1) or (8), subject to such conditions or restrictions as the Authority may specify by notice in writing.

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

(14) Subject to subsections (11) and (12), any approved clearing house which contravenes subsection (1), (2) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Listing of approved clearing houses on securities market

72.—(1) The securities of an approved clearing house shall not be listed for quotation on a securities market that is operated by any of its related corporations, unless the approved 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 approved clearing house.

(2) Where the securities of an approved 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 approved clearing house to or from the official list of the securities market; and

(b) the granting of approval for the securities of the approved clearing house to be, or the stopping or suspending of the securities of the approved clearing house from being, listed for quotation or quoted on the securities market.

(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 approved clearing house for quotation or trading;
or

(b) waive the application of any listing rule of the securities market to the approved clearing house.

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

Additional powers of Authority in respect of auditors

73.—(1) If an auditor of an approved clearing house, in the course of the performance of his duties, becomes aware of any matter or irregularity referred to in the following paragraphs, he shall immediately send to the Authority a written report of that matter or irregularity:

(a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the approved clearing house to a material extent;

(b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty;

(c) any irregularity that has or may have a material effect upon the accounts of the approved clearing house, including any irregularity that affects or jeopardises, or

may affect or jeopardise, the funds or property of investors.

(2) An auditor of an approved clearing house 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).

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

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

- (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 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).

(5) The approved 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).

Subdivision (4) — Immunity

Immunity from criminal or civil liability

74.—(1) No criminal or civil liability shall be incurred by an approved clearing house, or by any person specified in subsection (2), for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or

purported discharge of the obligations of the approved clearing house under this Act or under the business rules of the approved clearing house (including the default rules of the approved clearing house).

(2) For the purposes of subsection (1), the specified person is any person acting on behalf of the approved clearing house, including —

- (a) any director of the approved clearing house; or
- (b) any member of any committee established by the approved clearing house.

Division 3 — Regulation of Recognised Clearing Houses

General obligations

75.—(1) A recognised clearing house —

- (a) shall operate a safe and efficient clearing facility;
- (b) shall manage any risks associated with its business and operations prudently;
- (c) in discharging its obligations under this Act, shall not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) shall 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) shall 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) shall enforce compliance by its members with its business rules;

- (g) shall have sufficient financial, human and system resources —
 - (i) to operate a safe and efficient clearing facility;
 - (ii) to meet contingencies or disasters; and
 - (iii) to provide adequate security arrangements;
- (h) shall maintain governance arrangements that are adequate for the clearing facility to be operated in a safe and efficient manner; and
- (i) shall ensure that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

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

(3) Notwithstanding subsection (2), the Authority may by notice in writing exempt any clearing facility operated by a recognised clearing house from all or any of the provisions of this Act, if the Authority is satisfied that such exemption would not detract from the objectives specified in section 47.

(4) It shall not be necessary to publish any exemption granted under subsection (3) in the *Gazette*.

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

Obligation to notify Authority of certain matters

76.—(1) A recognised clearing house shall, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

- (a) any material change to the information provided by the recognised clearing house in its application under section 50(1) or (2) or 54(1);

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- (b) the recognised clearing house becoming aware of any financial irregularity or other matter which in its opinion —
- (i) may affect its ability to discharge its financial obligations; or
 - (ii) may affect the ability of a member of the recognised clearing house to meet its financial obligations to the recognised clearing house;
- (c) any other matter that the Authority may —
- (i) prescribe by regulations made under section 81Q for the purposes of this paragraph; or
 - (ii) specify by notice in writing to the recognised clearing house in any particular case.

(2) A recognised clearing house shall notify the Authority of any matter that the Authority may prescribe by regulations made under section 81Q for the purposes of this subsection, no later than such time as the Authority may prescribe by those regulations.

(3) A recognised clearing house shall notify the Authority of any matter that the Authority may specify by notice in writing to the recognised clearing house, no later than such time as the Authority may specify in that notice.

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

77.—(1) Without prejudice to sections 81Q and 341, the Authority may make regulations —

- (a) relating to how any money or assets deposited with or paid to a recognised clearing house by its members, for or in relation to any contracts of the customers of those members, are to be held by the recognised clearing house and, in particular, requiring any such money or assets to be deposited in trust accounts or custody accounts;

- (b) relating to the circumstances under which, and the purposes for which, the money or assets referred to in paragraph (a) may be used by the recognised clearing house;
 - (c) relating to how the recognised clearing house may invest the money or assets referred to in paragraph (a); and
 - (d) for any other purpose relating to the handling of the money or assets referred to in paragraph (a).
- (2) Regulations made under this section may provide —
 - (a) that a contravention of any specified provision thereof shall be an offence; and
 - (b) for a penalty not exceeding a fine of \$150,000 and, in the case of a continuing offence, for a further penalty not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Obligation to maintain proper records

78.—(1) A recognised clearing house shall maintain a record of all transactions effected through its clearing facility.

(2) The Authority may prescribe by regulations made under section 81Q —

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

Obligation to submit periodic reports

79. A recognised clearing house shall submit to the Authority such reports in such form and manner, and at such frequency, as the Authority may prescribe.

Obligation to assist Authority

80. A recognised 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 —

- (a) the furnishing of such returns as the Authority may require for the proper administration of this Act; and
- (b) the provision of —
 - (i) such books and information as the Authority may require for the proper administration of this Act, being books and information —
 - (A) relating to the business of the recognised clearing house; or
 - (B) in respect of any transaction or class of transactions cleared or settled by the recognised clearing house; and
 - (ii) such other information as the Authority may require for the proper administration of this Act.

Obligation to maintain confidentiality

81.—(1) Subject to subsection (2), a recognised 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 recognised clearing house or any of its officers or employees; or
 - (b) is in the possession of the recognised clearing house or any of its officers or employees.
- (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.

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

Penalties under this Division

81A. Any recognised clearing house which contravenes section 75(1), 76, 78(1), 79, 80 or 81(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Division 4 — Insolvency

Application of this Division

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

Proceedings of approved clearing house or recognised clearing house shall take precedence over law of insolvency

81C.—(1) The following shall not be invalid to any extent at law by reason only of inconsistency with any written law or rule of law relating to the distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver, a receiver and manager or a person in an equivalent capacity over any of the assets of a person:

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;

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- (c) the provision of market collateral;
 - (d) a contract effected by an approved clearing house or a recognised clearing house for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;
 - (e) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;
 - (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
 - (g) a disposition of property for the purpose of enforcing a market charge;
 - (h) a market charge;
 - (i) any default proceedings.

(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 an approved clearing house or a recognised clearing house, or any proceedings or other action taken under those business rules; or
- (b) any default proceedings.

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

(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 any unsecured liabilities of the bank arising from and after the settlement of market contracts.

(5) For the avoidance of doubt, subsection (4) shall not affect the settlement of market contracts in accordance with the business rules of an approved clearing house or a recognised clearing house.

Supplementary provisions as to default proceedings

81D.—(1) A court may, on the application of a relevant office holder, make an order to alter, or to release the relevant office holder from complying with, the functions of his office that are affected by default proceedings, if default proceedings have been, could be, or could have been, taken.

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

(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.

Duty to report on completion of default proceedings

81E.—(1) An approved clearing house or a recognised clearing house —

(a) shall, upon the conclusion of any default proceedings commenced by it, make a report on those proceedings stating, as the case may be, in respect of each defaulter who is a subject of those proceedings —

(i) the net sum, if any, certified by it to be payable by or to the defaulter; or

(ii) the fact that no sum is so payable; and

(b) may include in that report such other particulars in respect of those proceedings as it thinks fit.

(2) An approved clearing house, or a recognised 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.

(3) The approved clearing house or recognised 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.

(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 the whole or any part of that report.

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

Net sum payable on completion of default proceedings

81F.—(1) This section shall apply to any net sum certified under section 81E(1)(a)(i) by an approved clearing house or a recognised clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

(2) Notwithstanding sections 87 and 88 of the Bankruptcy Act (Cap. 20) and section 327 of the Companies Act (Cap. 50), where, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012, a receiving order or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum as certified under section 81E(1)(a)(i) 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.

Disclaimer of onerous property, rescission of contracts, etc.

81G.—(1) Section 110 of the Bankruptcy Act (Cap. 20) and section 332 of the Companies Act (Cap. 50) shall not apply to —

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

(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 an approved clearing house, or a recognised clearing house, for the purpose of realising property provided as market collateral, or any disposition of property pursuant to such a contract;
- (e) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge; or
- (i) any default proceedings.

Adjustment of prior transactions

81H.—(1) No order shall be made, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012, in relation to any matter to which this section applies, by a court under any of the following provisions in any proceedings, whether instituted before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012:

- (a) section 98 or 99 of the Bankruptcy Act (Cap. 20);
 - (b) section 227T, 329 or 331 of the Companies Act (Cap. 50);
 - (c) section 73B of the Conveyancing and Law of Property Act (Cap. 61).
- (2) The matters to which this section applies are as follows:
- (a) a market contract;
 - (b) a disposition of property pursuant to a market contract;
 - (c) the provision of market collateral;
 - (d) a contract effected by an approved clearing house, or a recognised clearing house, for the purpose of realising property provided as market collateral;
 - (e) a disposition of property in accordance with the business rules of an approved clearing house, or a recognised clearing house, relating to the application of property provided as market collateral;
 - (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge;
- (i) any default proceedings.

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

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

(2) The amount equal to the specified gain is recoverable even if the sale or purchase may have been discharged according to the business rules of an approved clearing house, or a recognised clearing house, and replaced by a market contract.

(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.

(4) In this section —

“specified event”, in relation to the second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means —

- (a) the making of a bankruptcy order against the second participant or that person, as the case may be;
- (b) the making of a statutory declaration in respect of the second participant or that person, as the case may be, under section 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, as at the time the sale or purchase was entered into, 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.

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

81J.—(1) This section shall have effect with respect to the application by an approved clearing house, or a recognised clearing house, of property provided as market collateral (referred to in this section as the property).

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

- (a) any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the approved clearing house or recognised clearing house had actual notice of the interest, right or breach of duty (other than any interest or right arising from the situation referred to in paragraph (b)), as the case may be, at the time the property was provided as market collateral; or
- (b) that the property is deposited by the approved clearing house or recognised clearing house in a trust account held for the benefit of a participant.

(3) No right or remedy arising subsequent to the provision of the property as market collateral may be enforced to prevent, or interfere with, the application of the property by the approved clearing house or recognised clearing house in accordance with its business rules or default rules.

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

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

81K.—(1) Where, whether before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012, any property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of any judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in, or security over, the property, except with the consent of the approved clearing house or recognised clearing house in favour of which the market charge was granted.

(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.

Law of insolvency in other jurisdictions

81L.—(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 any place outside Singapore; or
- (b) an act of a person appointed in any place outside Singapore to perform a function under the law of insolvency in that place,

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

(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.

Participant to be party to certain transactions as principal**81M.**—(1) Where —

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

then, notwithstanding any other written law or rule of law, as between, and only as between, the approved clearing house or recognised clearing house and the participant or the person who is his principal in respect of that transaction, the participant shall, for all purposes (including any action, claim or demand, whether civil or criminal), be deemed to be a party to that transaction as principal, and not as agent.

(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, except as between, and only as between, a participant to whom paragraph (b) applies 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), be deemed to be a party to that transaction as principal, and not as agent.

Preservation of rights, etc.**81N.** Except to the extent that it expressly provides, this Division shall not operate to limit, restrict or otherwise affect —

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- (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.

Immunity from criminal or civil liability

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

- (a) a person discharging, by virtue of a delegation under the default rules of an approved clearing house or a recognised clearing house, an obligation of the approved clearing house or recognised clearing house in connection with any default proceedings; or
- (b) any person acting on behalf of a person referred to in paragraph (a), including —
 - (i) any member of the board of directors of the person referred to in paragraph (a); and
 - (ii) any member of any committee established by the person referred to in paragraph (a),

for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the discharge or purported discharge of that obligation.

(2) Where a relevant office holder takes action in relation to any property of a defaulter which is liable to be dealt with in accordance with the default rules of an approved clearing house or a recognised clearing house, and the relevant office holder reasonably believes or has reasonable grounds for believing that he is entitled to take that action, the relevant office holder shall not be liable to any person in respect of any loss or damage resulting from any action of the relevant office holder, except insofar as the loss or damage, as the case may be, is caused by the negligence of the relevant office holder.

*Division 5 — General Powers of Authority***Power of Authority to remove officers**

81P.—(1) Where the Authority is satisfied that any of the following applies to an officer of an approved clearing house or a recognised clearing house (such approved clearing house or recognised clearing house being a Singapore corporation), the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing direct the approved clearing house or recognised clearing house to remove the officer from his office or employment, and the approved clearing house or recognised clearing house shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50) or anything in any other law or in the memorandum or articles of association or other constituent document or documents of the approved clearing house or recognised clearing house:

- (a) the officer has wilfully contravened, or wilfully caused the approved clearing house or recognised clearing house to contravene, this Act or the business rules of the approved clearing house or recognised clearing house;
- (b) the officer has, without reasonable excuse, failed to ensure compliance with this Act, or with the business rules of the approved clearing house or recognised clearing house, by the approved clearing house or recognised clearing house, by a member of the approved clearing house or recognised clearing house or by a person associated with that member;
- (c) the officer has failed to discharge the duties or functions of his office or employment;
- (d) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) the officer has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) the officer has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his

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

- (g) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012, involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly.

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether an officer of an approved clearing house, or a recognised clearing house, has failed to discharge the duties or functions of his 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.

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

(4) The Authority may direct an approved clearing house, or a recognised clearing house, to remove an officer from his office or employment under subsection (1) on any of the following grounds without giving the approved clearing house or recognised clearing house an opportunity to be heard:

- (a) the officer is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the officer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 7 of the Securities and Futures (Amendment) Act 2012 —
- (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.

(5) Where the Authority directs an approved clearing house, or a recognised 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.

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

(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.

(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.

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

(10) Any approved clearing house or recognised clearing house which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to make regulations

81Q.—(1) Without prejudice to section 341, the Authority may make regulations for the purposes of this Part, including regulations —

- (a) relating to the approval of approved clearing houses and the recognition of recognised clearing houses;
 - (b) relating to the requirements applicable to any person who establishes, operates or assists in establishing or operating a clearing facility, whether or not the person is approved as an approved clearing house under section 51(1)(a) or recognised as a recognised clearing house under section 51(1)(b) or (2); and
 - (c) for the purposes of section 59 and, in particular —
 - (i) requiring an approved clearing house to take into account specified positions for the purposes of determining if any limits established or varied under section 59(1) have been exceeded;
 - (ii) requiring an approved clearing house to take specified steps to ensure compliance with those limits; and
 - (iii) specifying measures to manage any risks assumed by an approved 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 a penalty not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence and, in the case of a continuing offence, for a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

Power of Authority to issue directions

81R.—(1) The Authority may issue directions, whether of a general or specific nature, by notice in writing, to an approved clearing house or a recognised clearing house, if the Authority thinks it necessary or expedient —

- (a) for ensuring the safe and efficient operation of any clearing facility operated by the approved clearing house or recognised clearing house, or of clearing facilities, operated by approved clearing houses or recognised clearing houses, in general;
- (b) for ensuring the integrity and stability of the capital markets or the financial system;
- (c) in the interests of the public or a section of the public or for the protection of investors;
- (d) for the effective administration of this Act; or
- (e) for ensuring compliance with any condition or restriction as may be imposed by the Authority under section 58(2), 70(5) or (10), 71(11) or (12) or 81SB(1) or (2), or such other obligations or requirements under this Act or as may be prescribed by the Authority.

(2) An approved clearing house or a recognised clearing house shall comply with every direction issued to it under subsection (1).

(3) Any approved clearing house or recognised clearing house which, without reasonable excuse, contravenes a direction issued to it under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

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

Emergency powers of Authority

81S.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors, the Authority may direct by notice in writing an approved clearing house or a recognised clearing house to take such action as the Authority considers necessary to maintain or restore the safe and efficient operation of the clearing facilities operated by the approved clearing house or recognised clearing house.

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

- (a) ordering the liquidation of all positions or any part thereof, or the reduction of such positions;
- (b) altering the conditions of delivery of transactions cleared or settled, or to be cleared or settled, through the clearing facility;
- (c) fixing the settlement price at which transactions are to be liquidated;
- (d) requiring margins or additional margins for transactions cleared or settled, or to be cleared or settled, through the clearing facility; and
- (e) modifying or suspending any of the business rules of the approved clearing house or recognised clearing house.

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

- (a) set margin levels for transactions cleared or settled, or to be cleared or settled, through the clearing facility to cater for the emergency;

(b) set limits that may apply to positions acquired in good faith prior to the date of the notice issued by the Authority; or

(c) take such other action as the Authority thinks fit to maintain or restore the safe and efficient operation of the clearing facilities operated by the approved clearing house or recognised clearing house.

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

(a) any act of any government affecting any commodity or securities;

(b) any major market disturbance which prevents a market from accurately reflecting the forces of supply and demand for any commodity or securities; or

(c) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

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

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

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

(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 by an approved clearing house or a recognised clearing house, under

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

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

Power of Authority to appoint adviser

81SA.—(1) The Authority may appoint one or more persons as statutory advisers, on such terms and conditions as the Authority may specify, to advise an approved clearing house or a recognised clearing house on the proper management of such business of the approved clearing house or recognised clearing house as the Authority may determine, where —

- (a) the approved clearing house or recognised clearing house informs the Authority that it is or is likely to become insolvent, 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) the approved clearing house or recognised clearing house becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that the approved clearing house or recognised 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, is or is likely to become unable to meet its obligations, or is about to suspend payments;
 - (iii) has contravened any of the provisions of this Act;
or

(iv) has failed to comply with any condition attached to its approval as an approved clearing house or its recognition as a recognised clearing house; or

(d) the Authority 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 to do so.

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

(a) vary or revoke any appointment made by the Authority under subsection (1), on such terms and conditions as the Authority 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 liability shall be incurred by 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 clearing house or a recognised clearing house to a statutory adviser appointed in relation to the approved clearing house or recognised clearing house, whether or not the appointment has been terminated.

(5) An approved clearing house or a recognised clearing house shall reimburse the Authority for any remuneration and expenses paid by the Authority to a statutory adviser that is payable by the

approved clearing house or recognised clearing house to the statutory adviser.

Power of Authority to exempt approved clearing house or recognised clearing house from provisions of this Part

81SB.—(1) Without prejudice to section 337(1), the Authority may, by regulations made under section 81Q, exempt any approved clearing house, recognised clearing house, or class of approved clearing houses or recognised clearing houses from any provision of this Part, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(2) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any approved clearing house or recognised clearing house from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by notice in writing, if the Authority is satisfied that the non-compliance by that approved clearing house or recognised clearing house with that provision will not detract from the objectives specified in section 47.

(3) It shall not be necessary to publish any exemption granted under subsection (2) in the *Gazette*.”.

Amendment of section 81T

8. Section 81T of the principal Act is amended —

(a) by inserting, immediately after sub-paragraph (i) of paragraph (a), the following sub-paragraph:

“(ia) licensed trade repositories;”;

(b) by deleting the word “designated” in paragraph (a)(ii) and substituting the word “approved”.

Amendment of section 81U

9. Section 81U of the principal Act is amended —

(a) by deleting the words “designated clearing house,” in subsection (1) and substituting the words “licensed trade repository, approved clearing house”; and

(b) by deleting subsections (3) and (4) and substituting the following subsections:

“(3) Without prejudice to section 337(1), the Authority may, by regulations made under section 81ZK, exempt any corporation or class of corporations from subsection (1), subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(4) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any corporation from subsection (1), subject to such conditions or restrictions as the Authority may specify by notice in writing, if the Authority is satisfied that the exemption will not detract from the objectives specified in section 81T.

(5) It shall not be necessary to publish any exemption granted under subsection (4) in the *Gazette*.

(6) The Authority may, at any time, by notice in writing —

(a) add to the conditions and restrictions referred to in subsection (4); or

(b) vary or revoke any condition or restriction referred to in that subsection.

(7) Every corporation that is granted an exemption under subsection (3) shall satisfy every condition or restriction imposed on it under that subsection.

(8) Every corporation that is granted an exemption under subsection (4) shall satisfy every condition or restriction imposed on it under that subsection or subsection (6).

(9) Any corporation which contravenes subsection (7) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not

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

Amendment of section 81Z

10. Section 81Z(1) of the principal Act is amended by deleting the words “designated clearing house” in paragraph (a) and substituting the words “licensed trade repository, approved clearing house”.

Amendment of section 81ZA

11. Section 81ZA(1) of the principal Act is amended —

- (a) by deleting the words “designated clearing house” in paragraphs (b)(i) and (ii) and (c)(i) and (ii) and substituting in each case the words “licensed trade repository, approved clearing house”; and
- (b) by inserting, immediately after the words “prescribe by regulations” in paragraph (d), the words “made under section 81ZK for the purposes of this paragraph”.

Amendment of section 81ZF

12. Section 81ZF of the principal Act is amended —

- (a) by deleting the words “Without prejudice to the generality of section 81ZK, the Authority may make regulations” in subsection (10) and substituting the words “The Authority may make regulations under section 81ZK”; and
- (b) by deleting the words “a designated clearing house” in subsection (11) and substituting the words “approved clearing house, or a participant of a licensed trade repository,”.

Repeal and re-enactment of section 81ZI

13. Section 81ZI of the principal Act is repealed and the following section substituted therefor:

“Power of Authority to exempt approved holding company from provisions of this Part

81ZI.—(1) Without prejudice to section 337(1), the Authority may, by regulations made under section 81ZK, exempt any

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

(2) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any approved holding company from any provision of this Part, subject to such conditions or restrictions as the Authority may specify by notice in writing, if the Authority is satisfied that the non-compliance by that licensed trade repository or licensed foreign trade repository with that provision will not detract from the objectives specified in section 81T.

(3) It shall not be necessary to publish any exemption granted under subsection (2) in the *Gazette*.”.

Amendment of section 81ZK

14. Section 81ZK(1) of the principal Act is amended by inserting, immediately after the words “the Authority may make regulations”, the words “for the purposes of this Part, including regulations”.

Amendment of section 81ZL

15. Section 81ZL of the principal Act is amended —

(a) by inserting, immediately after paragraph (a) of subsection (1), the following paragraph:

“(aa) for ensuring safe and efficient trade repositories;” and

(b) by deleting subsection (3) and substituting the following subsection:

“(3) It shall not be necessary to publish any direction issued under subsection (1) in the *Gazette*.”.

Amendment of section 95

16. Section 95(2) of the principal Act is amended —

(a) by inserting, immediately after paragraph (b), the following paragraph:

“(ba) the Authority has reason to believe that the holder has not acted in the best interests of the holder’s subscribers or customers;”; and

(b) by inserting, immediately after paragraph (d), the following paragraph:

“(da) it appears to the Authority that the holder has failed to satisfy any of its obligations under or arising from —

(i) this Act; or

(ii) any written direction issued by the Authority under this Act;”.

Amendment of section 99

17. Section 99(1) of the principal Act is amended by deleting the words “designated clearing house” in paragraph (g) and substituting the words “approved clearing house or recognised clearing house”.

Amendment of section 99H

18. Section 99H of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

“(1A) Subsection (1) shall not apply to a principal who desires to appoint, as an appointed representative in respect of any type of regulated activity, an individual who is a provisional representative in respect of that type of regulated activity, if —

(a) that individual has satisfied the examination requirements specified for that type of regulated activity; and

(b) the principal has informed the Authority of that fact in the prescribed form and manner under section 99E(5).”.

Amendment of section 99K

19. Section 99K of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) An individual who is an appointed or provisional representative in respect of any type of regulated activity 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 in respect of that type of regulated activity.”.

Amendment of section 99M

20. Section 99M(1) of the principal Act is amended —

- (a) by deleting the words “of licence” in paragraph (h)(i) and substituting the words “for him to be an appointed, provisional or temporary representative”;
- (b) by deleting the word “or” at the end of paragraph (h)(ii);
- (c) by inserting, immediately after the words “will not carry” in paragraph (h)(iii), the words “, or has not carried,”;
- (d) by inserting, at the end of paragraph (h)(iii), the word “or”;
- (e) by inserting, immediately after sub-paragraph (iii) of paragraph (h), the following sub-paragraph:
 - “(iv) the Authority has reason to believe that he has not acted in the best interests of the subscribers or customers of his principal;”; and
- (f) by inserting, immediately after paragraph (o), the following paragraph:
 - “(oa) it appears to the Authority that he has failed to satisfy any of his obligations under or arising from —
 - (i) this Act; or
 - (ii) any written direction issued by the Authority under this Act;”.

Amendment of section 101

21. Section 101 of the principal Act is amended —

- (a) by deleting the words “public interest” in subsection (1) and substituting the words “interests of the public or a section of the public or for the protection of investors”; and
- (b) by deleting subsection (4) and substituting the following subsection:

“(4) It shall not be necessary to publish any direction issued under subsection (1) in the *Gazette*.”.

Amendment of section 101A

22. Section 101A of the principal Act is amended —

- (a) by deleting paragraph (d) of subsection (1) and substituting the following paragraphs:

“(ca) where the relevant person is or was a representative of an exempt person but is not exempted under section 99B(2) from section 99B(1), the Authority has reason to believe that circumstances exist under which, if the relevant person were an appointed, provisional or temporary representative, there would exist a ground on which the Authority may revoke under section 99M the relevant person’s status as an appointed, provisional or temporary representative;

(cb) where the relevant person is or was a representative of a holder of a capital markets services licence but is not exempted under section 99B(2) from section 99B(1), the Authority has reason to believe that circumstances exist under which there would exist a ground on which the Authority may revoke under section 99M the relevant person’s status as an appointed, provisional or temporary representative;

- (cc) where the relevant person is or was a representative of an exempt person, or a representative of a holder of a capital markets services licence, and is exempted under section 99B(2) from section 99B(1), the Authority has reason to believe that circumstances exist under which, if the person were an appointed representative, there would exist a ground on which the Authority may revoke under section 99M the relevant person's status as an appointed representative;
- (d) the Authority has reason to believe that the person is contravening, is likely to contravene or has contravened —
- (i) any provision in this Act;
 - (ii) any condition or restriction imposed by the Authority under this Act; or
 - (iii) any written direction issued by the Authority under this Act;”;
- (b) by deleting the words “section 99(1)(f), (g) or (h)” in subsection (2)(c) and substituting the words “section 99(1)”;
- (c) by inserting, immediately after paragraph (d) of subsection (2), the following paragraph:
- “(da) a representative exempted under section 99B(2) from section 99B(1), or a person who was previously such a representative;”;
- (d) by inserting, immediately after subsection (6), the following subsections:
- “(7) The Authority shall keep, in such form as it thinks fit, records on persons against whom prohibition orders are made under this section.
- (8) The Authority may publish the records referred to in subsection (7), or any part of them, in such manner as the Authority considers appropriate.”.

Amendment of section 104

23. Section 104(1) of the principal Act is amended by inserting, immediately after the words “do so” in paragraph (a), the words “, except in such circumstances as may be prescribed by the Authority,”.

Amendment of section 110

24. Section 110(1) of the principal Act is amended by deleting the words “a securities exchange, futures exchange or designated clearing house” in paragraph (c) and substituting the words “any securities exchange, futures exchange, licensed trade repository, approved clearing house or recognised clearing house”.

Amendment of section 114

25. Section 114 of the principal Act is amended by deleting the words “a securities exchange, futures exchange or designated clearing house” and substituting the words “any securities exchange, futures exchange, licensed trade repository, approved clearing house or recognised clearing house”.

Amendment of section 123

26. Section 123(2) of the principal Act is amended by deleting paragraph (aa) and substituting the following paragraph:

“(aa) specify, in the context of the granting of an unsecured advance, unsecured loan or unsecured credit facility by the holder of a capital markets services licence —

- (i) what constitutes any such unsecured advance, unsecured loan or unsecured credit facility; and
- (ii) the requirements and restrictions relating to any such grant;”.

New Parts VIA and VIB

27. The principal Act is amended by inserting, immediately after section 123, the following Parts:

“PART VIA

REPORTING OF DERIVATIVES CONTRACTS

Interpretation of this Part

124. In this Part, unless the context otherwise requires —

“bank in Singapore” has the same meaning as in section 2(1) of the Banking Act (Cap. 19);

“market contract” means —

(a) a contract subject to the business rules of an approved clearing house, or a recognised clearing house, that is entered into between the approved clearing house or recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the approved clearing house or recognised clearing house; or

(b) a transaction which is being cleared or settled using the clearing facility of an approved clearing house or a recognised clearing house, and in accordance with the business rules of the approved clearing house or recognised clearing house, whether or not a novation referred to in paragraph (a) is to take place;

“specified derivatives contract” means any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by the Authority by regulations made under section 129 for the purposes of this definition;

“specified person” means —

(a) any bank in Singapore licensed under the Banking Act;

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- (b) any subsidiary of a bank incorporated in Singapore;
 - (c) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
 - (d) any finance company licensed under the Finance Companies Act (Cap. 108);
 - (e) any insurer registered under the Insurance Act (Cap. 142);
 - (f) any approved trustee referred to in section 289;
 - (g) any holder of a capital markets services licence; or
 - (h) any other person who is, or who belongs to a class of persons which is, prescribed by the Authority by regulations made under section 129 for the purposes of this definition.

Reporting of specified derivatives contracts

125.—(1) Every specified person who is a party to a specified derivatives contract shall, at such time or times and in such form or manner as the Authority may prescribe by regulations made under section 129, report to a licensed trade repository or licensed foreign trade repository —

- (a) such information on the specified derivatives contract as the Authority may prescribe by those regulations; and
- (b) any amendment, modification, variation or change to the information referred to in paragraph (a).

(2) Without prejudice to subsection (1), where the circumstances referred to in subsection (3) apply, a specified person who enters into a specified derivatives contract as an agent of a party to the specified derivatives contract shall, at such time or times and in such form or manner as the Authority may prescribe by regulations made under section 129, report to a licensed trade repository or licensed foreign trade repository —

- (a) such information on the specified derivatives contract as the Authority may prescribe by those regulations; and
- (b) any amendment, modification, variation or change to the information referred to in paragraph (a).

(3) For the purposes of subsection (2), the circumstances are as follows:

- (a) the party to the specified derivatives contract —
 - (i) is not a specified person; or
 - (ii) is a specified person, but is exempted under section 129A from subsection (1);
- (b) the specified person referred to in subsection (2) —
 - (i) is incorporated in Singapore; or
 - (ii) has an office or a branch in Singapore; and
- (c) the specified person referred to in subsection (2) enters into the specified derivatives contract through an individual (being an officer or employee of the specified person) who, at the time the specified derivatives contract is entered into, satisfies both of the following requirements:
 - (i) the individual's place of employment is Singapore; and
 - (ii) the individual is physically in Singapore.

(4) A specified person who is required to comply with subsection (1) or (2) in relation to any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) shall be deemed to have reported that information to a licensed trade repository or licensed foreign trade repository, if —

- (a) the specified person has reported that information to any other person;
- (b) that other person has reported that information, in such form or manner as the Authority may prescribe by

regulations made under section 129, to that licensed trade repository or licensed foreign trade repository; and

(c) that information is true and correct and has been received by that licensed trade repository or licensed foreign trade repository.

(5) A specified person who is required to comply with subsection (1) or (2) in relation to any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) shall be deemed to have reported that information to a licensed trade repository or licensed foreign trade repository, if —

(a) any other specified person who is required to comply with subsection (1) or (2) in relation to that information, or any other party to the specified derivatives contract, has reported that information to that licensed trade repository or licensed foreign trade repository in accordance with subsection (1) or (2), or is deemed under subsection (3) to have so reported that information; and

(b) that information is true and correct and has been received by that licensed trade repository or licensed foreign trade repository.

(6) A specified person who is deemed, under subsection (4) or (5), to have reported any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) to a licensed trade repository or licensed foreign trade repository shall be deemed to have so reported that information at the time that information is received by that licensed trade repository or licensed foreign trade repository.

(7) Any specified person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(8) A specified person who is required under subsection (1) or (2) to report any information to a licensed trade repository or licensed foreign trade repository shall use due care to ensure that the information reported is not false in any material particular.

(9) Any specified person who contravenes subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(10) Except where the parties to a specified derivatives contract have entered into an express agreement to the contrary, the specified derivatives contract shall not, by reason only of a contravention of subsection (1), (2) or (8) in relation to the specified derivatives contract, be voidable or void.

(11) For the purposes of subsections (1)(a) and (2)(a), the information on a specified derivatives contract that the Authority may prescribe by regulations made under section 129 includes, but is not limited to —

- (a) the identities of the parties to the specified derivatives contract; and
- (b) the characteristics of the specified derivatives contract, including, but not limited to, operational data (such as clearing and settlement details), event data (such as execution time), underlying information and information on transaction economics (such as effective date and maturity date).

(12) For the purposes of this section, where any right or obligation under a specified derivatives contract is transferred to any market contract, a reference to the specified derivatives contract shall include a reference to that market contract.

Power of Authority to obtain information

126.—(1) The Authority may require any person to furnish the Authority with such information or documents as the Authority considers necessary for determining —

- (a) whether any derivatives contract or class of derivatives contract should be prescribed for the purposes of the

definition of “specified derivatives contract” in section 124;

- (b) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (h) of the definition of “specified person” in section 124; or
- (c) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or indirectly, any requirement that is, or that would otherwise have been, imposed under section 125(1) or (2).

(2) Subject to subsections (4) and (5), a person shall comply with every requirement imposed on him under subsection (1).

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

(4) No person shall by virtue of this section be obliged to furnish any information or document as to which he is under any statutory obligation to observe secrecy.

(5) Nothing in this section shall compel an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97), to furnish any information on, or any document containing, any privileged communication made by or to him in that capacity.

(6) Where a person claims, before furnishing the Authority with any information or documents that he is required to furnish under subsection (1)(c), that the information or documents might tend to incriminate him, the information or documents —

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (3); but

- (b) shall be admissible in evidence for civil proceedings under Part XII.

Directions on alternative reporting arrangements

127.—(1) Where the Authority is of the opinion that any licensed trade repository or licensed foreign trade repository is not available for the reporting of, or is incapable of receiving, any information on any specified derivatives contract (including any amendment, modification, variation or change to that information) under section 125(1) or (2), the Authority may issue directions, whether of a general or specific nature, by notice in writing, to any specified person referred to in section 125(1) or (2) or class of such persons, requiring the specified person or class of such persons to do one or more of the following:

- (a) to maintain records of that information in such form or manner as the Authority may prescribe by regulations made under section 129;
- (b) to report that information, or submit records of that information, in such form or manner as the Authority may specify in that notice, at such frequency and over such period as the Authority may specify in that notice, to such person as the Authority may specify in that notice;
- (c) to give the Authority, or such person as the Authority may specify in that notice, access to that information, or to records of that information, in such manner as the Authority may specify in that notice.

(2) A specified person referred to in subsection (1) shall comply with every direction issued to him under that subsection.

(3) A specified person shall be deemed to have complied with section 125(1) or (2) in relation to any information on a specified derivatives contract (including any amendment, modification, variation or change to that information) if, while a direction issued to him under subsection (1) remains in force, he complies with that direction in relation to that information.

(4) The Authority may cancel a direction issued under subsection (1) in relation to any licensed trade repository or licensed foreign trade repository, if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

(5) Any specified person who, without reasonable excuse, contravenes a direction 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.

(6) It shall not be necessary to publish any direction issued under subsection (1) in the *Gazette*.

(7) For the purposes of this section, a reference to any information on a specified derivatives contract includes a reference to any such information which has previously been reported to a licensed trade repository or licensed foreign trade repository under section 125.

Compliance with laws and practices of relevant reporting jurisdiction

128.—(1) Subject to subsection (3), a specified person who is a party to a specified derivatives contract shall be deemed to have complied with section 125(1) in relation to any information on the specified derivatives contract (including any amendment, modification, variation or change to that information), if —

- (a) any other party to the specified derivatives contract is incorporated, formed or established under the laws of, or has a place of business in, a relevant reporting jurisdiction; and
- (b) the specified person, or any other party to the specified derivatives contract, is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the reporting of specified derivatives contracts under the laws and practices of the relevant reporting jurisdiction.

(2) Subject to subsection (3), a specified person who enters into a specified derivatives contract as an agent of a party to the specified derivatives contract (referred to in this subsection as the principal party) shall be deemed to have complied with section 125(2) in relation to any information on the specified derivatives contract (including any amendment, modification, variation or change to that information), if —

- (a) the principal party, or any other party to the specified derivatives contract, is incorporated, formed or established under the laws of, or has a place of business in, a relevant reporting jurisdiction; and
- (b) the principal party, or any other party to the specified derivatives contract, is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the reporting of specified derivatives contracts under the laws and practices of the relevant reporting jurisdiction.

(3) Subsections (1) and (2) shall not apply to any specified derivatives contract that is, or that belongs to a class of specified derivatives contracts that is, prescribed by the Authority by regulations made under section 129 for the purposes of this subsection.

(4) In this section —

“place of business”, in relation to a party to a specified derivatives contract, means a head or main office, a branch, a representative office or any other office of the party;

“relevant reporting jurisdiction” means any foreign jurisdiction that is prescribed by the Authority by regulations made under section 129 for the purposes of this definition.

Power of Authority to make regulations

129.—(1) Without prejudice to section 341, the Authority may make regulations for the purposes of this Part, including

regulations to prescribe anything which may be prescribed under this Part.

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of “specified derivatives contract” in section 124, the Authority may have regard to —

- (a) the significance of that derivatives contract or class of derivatives contracts in Singapore;
- (b) international developments in the reporting of derivatives contracts; and
- (c) any other matters that the Authority deems to be relevant.

Exemption from section 125

129A.—(1) Without prejudice to section 337(1), the Authority may, by regulations made under section 129, exempt any specified person or class of specified persons from all or any of the provisions of section 125, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(2) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any specified person from all or any of the provisions of section 125, subject to such conditions or restrictions as the Authority may specify by notice in writing.

(3) It shall not be necessary to publish any exemption granted under subsection (2) in the *Gazette*.

(4) Every specified person that is granted an exemption under subsection (1) or (2) shall satisfy every condition or restriction imposed on the specified person under the applicable subsection.

(5) Any specified person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

PART VIB

CLEARING OF DERIVATIVES CONTRACTS

Interpretation of this Part

129B. In this Part, unless the context otherwise requires —

“bank in Singapore” has the same meaning as in section 2(1) of the Banking Act (Cap. 19);

“clearing” means any arrangement, process, mechanism or service provided by a person in respect of transactions, by which parties to those transactions substitute, through novation or otherwise, the credit of such person for the credit of the parties;

“specified derivatives contract” means any derivatives contract that is, or that belongs to a class of derivatives contracts that is, prescribed by the Authority by regulations made under section 129G for the purposes of this definition;

“specified person” means —

- (a) any bank in Singapore licensed under the Banking Act;
- (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
- (c) any finance company licensed under the Finance Companies Act (Cap. 108);
- (d) any insurer registered under the Insurance Act (Cap. 142);
- (e) any approved trustee referred to in section 289;
- (f) any holder of a capital markets services licence; or
- (g) any other person who is, or who belongs to a class of persons which is, prescribed by the Authority by regulations made under section 129G for the purposes of this definition.

Clearing of specified derivatives contracts

129C.—(1) Every specified person who is a party to a specified derivatives contract shall, within such time as the Authority may prescribe by regulations made under section 129G, cause the specified derivatives contract to undergo clearing, by a clearing facility operated by an approved clearing house or a recognised clearing house, in accordance with the business rules of the approved clearing house or recognised clearing house, as the case may be.

(2) Any specified person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(3) Except where the parties to a specified derivatives contract have entered into an express agreement to the contrary, the specified derivatives contract shall not, by reason only of a contravention of subsection (1) in relation to the specified derivatives contract, be voidable or void.

Power of Authority to obtain information

129D.—(1) The Authority may require any person to furnish the Authority with such information or documents as the Authority considers necessary for determining —

- (a) whether any derivatives contract or class of derivatives contracts should be prescribed for the purposes of the definition of “specified derivatives contract” in section 129B;
- (b) whether the person or any other person or class of persons should be prescribed for the purposes of paragraph (g) of the definition of “specified person” in section 129B; or
- (c) whether the purpose or effect of any contract, arrangement, transaction or class of contracts, arrangements or transactions is to avoid, directly or

indirectly, any requirement that is, or that would otherwise have been, imposed under section 129C(1).

(2) Subject to subsections (4) and (5), a person shall comply with every requirement imposed on him under subsection (1).

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

(4) No person shall by virtue of this section be obliged to furnish any information or document as to which he is under any statutory obligation to observe secrecy.

(5) Nothing in this section shall compel an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97), to furnish any information on, or any document containing, any privileged communication made by or to him in that capacity.

(6) Where a person claims, before furnishing the Authority with any information or documents that he is required to furnish under subsection (1)(c), that the information or documents might tend to incriminate him, the information or documents —

(a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (3); but

(b) shall be admissible in evidence for civil proceedings under Part XII.

Directions on alternative clearing arrangements

129E.—(1) Where the Authority is of the opinion that any clearing facility operated by any approved clearing house or recognised clearing house is not available for the clearing of, or is incapable of clearing, any type of specified derivatives contract under section 129C(1), the Authority may issue directions, whether of a general or specific nature, by notice in writing, to any specified person who is a party to any specified derivatives

contract of that type, or to any class of specified persons who are parties to specified derivatives contracts of that type, requiring the specified person or class of specified persons, as the case may be, to cause that specified derivatives contract or those specified derivatives contracts, as the case may be, to undergo clearing by such other person, in such manner, as the Authority may specify in that notice.

(2) A specified person referred to in subsection (1) shall comply with every direction issued to him under that subsection.

(3) A specified person shall be deemed to have complied with section 129C(1) in relation to a specified derivatives contract if, while a direction issued to him under subsection (1) remains in force, he complies with that direction in relation to that specified derivatives contract.

(4) The Authority may cancel a direction issued under subsection (1) in relation to any clearing facility operated by any approved clearing house or recognised clearing house, if the Authority is of the opinion that the grounds for the issue of the direction have ceased to apply.

(5) Any specified person who, without reasonable excuse, contravenes a direction issued to him under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(6) It shall not be necessary to publish any direction issued under subsection (1) in the *Gazette*.

Compliance with laws and practices of relevant clearing jurisdiction

129F.—(1) Subject to subsection (2), a specified person who is a party to a specified derivatives contract shall be deemed to have complied with section 129C(1) in relation to the specified derivatives contract, if —

- (a) any other party to the specified derivatives contract is incorporated, formed or established under the laws of, or has a place of business in, a relevant clearing jurisdiction; and
- (b) every party to the specified derivatives contract is required to comply with, and has complied with, in relation to the specified derivatives contract, the requirements relating to the clearing of specified derivatives contracts under the laws and practices of the relevant clearing jurisdiction.

(2) Subsection (1) shall not apply to any specified derivatives contract that is, or that belongs to a class of specified derivatives contracts that is, prescribed by the Authority by regulations made under section 129G for the purposes of this subsection.

(3) In this section —

“place of business”, in relation to a party to a specified derivatives contract, means a head or main office, a branch, a representative office or any other office of the party;

“relevant clearing jurisdiction” means a foreign jurisdiction that is prescribed by the Authority by regulations made under section 129G for the purposes of this definition.

Power of Authority to make regulations

129G.—(1) Without prejudice to section 341, the Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

(2) In deciding whether to prescribe any derivatives contract or class of derivatives contracts for the purposes of the definition of “specified derivatives contract” in section 129B, the Authority may have regard to —

- (a) the level of systemic risk posed by that derivatives contract or class of derivatives contracts;

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- (b) the characteristics and level of standardisation of the contractual terms and operational processes relating to that derivatives contract or class of derivatives contracts;
 - (c) the depth and liquidity of the market for that derivatives contract or class of derivatives contracts;
 - (d) the availability of fair, reliable and generally accepted pricing sources for that derivatives contract or class of derivatives contracts;
 - (e) the international regulatory approach towards that derivatives contract or class of derivatives contracts;
 - (f) whether there is any anti-competitive effect associated with that derivatives contract or class of derivatives contracts;
 - (g) the availability of approved clearing houses or recognised clearing houses that operate clearing facilities for the clearing of that derivatives contract or class of derivatives contracts; and
 - (h) any other matters that the Authority deems to be relevant.

Exemption from section 129C

129H.—(1) Without prejudice to section 337(1), the Authority may, by regulations made under section 129G, exempt any specified person or class of specified persons from all or any of the provisions of section 129C, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(2) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any specified person from all or any of the provisions of section 129C, subject to such conditions or restrictions as the Authority may specify by notice in writing.

(3) It shall not be necessary to publish any exemption granted under subsection (2) in the *Gazette*.

(4) Every specified person that is granted an exemption under subsection (1) or (2) shall satisfy every condition or restriction imposed on the specified person under the applicable subsection.

(5) Any specified person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of section 138

28. Section 138 of the principal Act is amended —

(a) by inserting, immediately after the words “an advocate and solicitor” in subsection (5), the words “, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97),”; and

(b) by inserting, immediately after the words “An advocate and solicitor” in subsection (6), the words “, or a legal counsel referred to in section 128A of the Evidence Act,”.

Amendment of section 142

29. Section 142(4) of the principal Act is amended —

(a) by deleting the words “a designated clearing house” and substituting the words “an approved clearing house or a recognised clearing house”; and

(b) by deleting the words “the designated clearing house” and substituting the words “the approved clearing house or recognised clearing house”.

Amendment of section 146

30. Section 146 of the principal Act is amended —

(a) by inserting, immediately after the words “an advocate and solicitor” in subsection (1), the words “, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97),”; and

- (b) by inserting, immediately after the words “An advocate and solicitor” in subsection (2), the words “, or a legal counsel referred to in section 128A of the Evidence Act,”.

Amendment of section 150

31. Section 150(1) of the principal Act is amended by deleting the words “a person operating a clearing facility, a designated clearing house,” and substituting the words “a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house,”.

Amendment of section 150A

32. Section 150A(1) of the principal Act is amended by deleting the words “person operating a clearing facility, designated clearing house,” and substituting the words “licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house,”.

Amendment of section 152

33. Section 152(6) of the principal Act is amended by inserting, immediately after the words “Subdivision (2)”, the words “or (3)”.

Amendment of section 153

34. Section 153 of the principal Act is amended —

- (a) by inserting, immediately after the words “Subdivision (2)” in subsections (1) and (2), the words “or (3)”;
- (b) by inserting, immediately after the words “an advocate and solicitor” in subsection (3)(a), the words “, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97),”; and
- (c) by inserting, immediately after the words “An advocate and solicitor” in subsection (4), the words “, or a legal counsel referred to in section 128A of the Evidence Act,”.

Amendment of section 162

35. Section 162(1) of the principal Act is amended by inserting, immediately after the words “refuses or fails to comply with”, the words “a requirement under”.

New section 163A

36. The principal Act is amended by inserting, immediately after section 163, the following section:

“Power to enter premises without warrant

163A.—(1) In connection with an investigation under this Division, any officer of the Authority who is authorised by the Authority to do so (referred to in this section as an investigator) and such other officers or persons as the Authority has authorised in writing to accompany the investigator (each referred to in this section as an authorised person) may enter any premises.

(2) No investigator and no authorised person accompanying the investigator shall enter any premises in the exercise of the powers under this section unless the investigator has given the occupier of the premises a written notice which —

- (a) gives at least 2 working days’ notice of the intended entry;
- (b) indicates the subject-matter and purpose of the investigation; and
- (c) indicates the nature of the offences created by section 168.

(3) Subsection (2) shall not apply —

- (a) if the investigation relates to an alleged or a suspected contravention of any provision of Part XII, and the investigator has reasonable grounds for suspecting that the premises are, or have been, occupied by a person who is being investigated in relation to the contravention; or

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- (b) if the investigator has taken all such steps as are reasonably practicable to give notice under subsection (2)(a) but has not been able to do so.
- (4) Where subsection (3) applies, the power of entry conferred by subsection (1) shall only be exercised upon production of —
- (a) evidence of the investigator’s authorisation and the authorisation of every authorised person accompanying him; and
- (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigator or authorised person entering any premises under this section may —
- (a) take with him such equipment as appears to him to be necessary;
- (b) require any person on the premises to produce any book which the investigator or authorised person considers relates to any matter relevant to the investigation;
- (c) require any person on the premises to state, to the best of the person’s knowledge and belief, where any such book is to be found; and
- (d) take any step, or issue to any person on the premises any requirement, which appears to be necessary for the purpose of preserving or preventing interference with any book which the investigator or authorised person considers relates to any matter relevant to the investigation.”.

Repeal and re-enactment of section 164

37. Section 164 of the principal Act is repealed and the following section substituted therefor:

“Warrant to seize books, etc.

164.—(1) A Magistrate may, on the application of the Authority —

- (a) issue a warrant, if the Magistrate is satisfied that there are reasonable grounds to suspect that there is, on any particular premises, any book —
 - (i) the production of which has been required by the Authority under section 163 or by an investigator or authorised person under section 163A, but which has not been produced in compliance with that requirement; or
 - (ii) which, if required by the Authority under section 163 to be produced, will be concealed, removed, tampered with or destroyed; and
- (b) if the Magistrate is also satisfied that there are reasonable grounds to suspect that there is, on those premises, any other book which relates to any matter relevant to the investigation concerned, direct that the powers exercisable under the warrant shall extend to that other book.

(2) A warrant issued under subsection (1) shall authorise the Authority or any person named in the warrant, with or without assistance —

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and to break open and search anything, whether a fixture or not, in the premises;
- (c) to take possession of, or secure against interference, any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b);
- (d) to require any person to provide an explanation of any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or to state, to the best of that person's knowledge and belief, where any such book may be found;

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- (e) to search any person on those premises, if there are reasonable grounds to suspect that the person has in his possession any book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or any equipment or article which relates to any matter relevant to the investigation concerned; and
 - (f) to remove from those premises for examination any book that appears to be a book referred to in subsection (1)(a) or, where applicable, subsection (1)(b), or any equipment or article which relates to any matter relevant to the investigation concerned.

(3) The Authority or any person named in the warrant to execute it may allow any equipment or article referred to in subsection (2)(f) to be retained on the premises specified in the warrant to be searched, subject to such conditions as the Authority or that person may require.

(4) Any person entering any premises by virtue of a warrant issued under subsection (1) may take with him such equipment as appears to him to be necessary.

(5) Where a warrant is issued under subsection (1), and there is no one present at the premises specified in the warrant to be searched when the Authority or any person named in the warrant proposes to execute the warrant, the Authority or that person shall, before executing the warrant —

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the premises of the intended entry into the premises; and
- (b) subject to subsection (6), give the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.

(6) If the Authority or any person named in the warrant to execute it is unable to inform the occupier of the premises of the intended entry into the premises, the Authority or that person

shall, when executing the warrant, leave a copy of the warrant in a prominent place on the premises.

(7) On leaving any premises specified in a warrant issued under subsection (1), the Authority or any person named in the warrant to execute it shall, if the premises are unoccupied or if the occupier of the premises is temporarily absent, leave the premises as effectively secured as the Authority or that person found the premises.

(8) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(9) In this section —

“occupier”, in relation to any premises specified in a warrant issued under subsection (1), includes any person whom the Authority or any person named in the warrant to execute it reasonably believes to be the occupier of those premises;

“premises” includes any structure, building, aircraft, vehicle or vessel.”.

Amendment of section 165

38. Section 165 of the principal Act is amended —

(a) by deleting paragraph (a) of subsection (1) and substituting the following paragraph:

“(a) books are produced to the Authority —

(i) pursuant to a requirement of the Authority under section 163 or of an investigator or authorised person under section 163A(5); or

(ii) during an entry into any premises by an investigator or authorised person under section 163A;”;

(b) by deleting the word “and” at the end of subsection (3)(b);

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- (c) by deleting the full-stop at the end of subsection (3)(c)(iii) and substituting the word “; and”;
- (d) by inserting, immediately after paragraph (c) of subsection (3), the following paragraph:
- “(d) require any book which the Authority or person referred to in subsection (1)(b) is satisfied relates to any matter relevant to an investigation under this Division, and which is stored in any electronic form, to be produced in a form which can be taken away and which is visible and legible.”;
- (e) by inserting, immediately after the words “Unless subsection (1)(b)(ii) applies,” in subsection (6), the words “an investigator or authorised person referred to in subsection (1)(a) or”;
- (f) by deleting the word “Where” in subsection (7) and substituting the words “Without prejudice to sections 163A(5) and 164(2)(d), where”;
- (g) by inserting, immediately after the words “the Authority,” in subsection (7), the words “an investigator or authorised person referred to in subsection (1)(a),”.

Amendment of section 168

39. Section 168 of the principal Act is amended —

- (a) by deleting the words “under section 163, 165(7) or 166” in subsection (1) and substituting the words “under section 163, 163A(5), 165(3)(d) or (7) or 166, or pursuant to an authorisation referred to in section 164(2)(d),”;
- (b) by deleting subsection (4) and substituting the following subsection:
- “(4) Any person, who conceals, destroys, mutilates or alters any book, equipment or article relating to a matter that the Authority is investigating or about to investigate under this Division or who, where any such book, equipment or article is within the territory of Singapore,

takes or sends the book, equipment or article out of Singapore, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.”;

(c) by inserting, immediately after the words “a person who is” in subsection (5), the words “exercising any power under section 163A(1) or (5) or”;

(d) by deleting subsection (6) and substituting the following subsection:

“(6) Any occupier or person in charge of any premises who fails to provide, to any person who enters those premises under section 163A(1) or under a warrant issued under section 164(1), all reasonable facilities and assistance for the effective exercise of that person’s powers under section 163A(1) or (5) or under the warrant, as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.”; and

(e) by deleting the word “Part” in the section heading and substituting the word “Division”.

Amendment of section 169

40. Section 169 of the principal Act is amended by deleting the words “securities or futures industry” in the definitions of “enforcement” and “investigation” and substituting in each case the words “securities, futures or derivatives industry”.

Amendment of section 172

41. Section 172 of the principal Act is amended —

(a) by inserting, immediately after the words “an advocate and solicitor” in subsection (4), the words “, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97)”;

and

- (b) by inserting, immediately after the words “An advocate and solicitor” in subsection (5), the words “, or a legal counsel referred to in section 128A of the Evidence Act,”.

Amendment of section 197

42. Section 197 of the principal Act is amended —

- (a) by deleting subsection (1) and substituting the following subsections:

“(1) No person shall do any thing, cause any thing to be done or engage in any course of conduct, if his purpose, or any of his purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, is to create a false or misleading appearance —

(a) of active trading in any securities on a securities market; or

(b) with respect to the market for, or the price of, such securities.

(1A) No person shall do any thing, cause any thing to be done or engage in any course of conduct that creates, or is likely to create, a false or misleading appearance of active trading in any securities on a securities market, or with respect to the market for, or the price of, such securities, if —

(a) he knows that doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance; or

(b) he is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance.”;

- (b) by deleting the words “a person who” in subsection (3) and substituting the words “where a person”;
- (c) by deleting the words “shall be deemed to have created” in subsection (3) and substituting the words “it shall be presumed that his purpose, or one of his purposes, for doing so is to create”; and
- (d) by deleting the words “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” in subsection (4) and substituting the words “The presumption under subsection (3) may be rebutted”.

Repeal and re-enactment of section 206

43. Section 206 of the principal Act is repealed and the following section substituted therefor:

“False trading

206.—(1) No person shall do any thing, cause any thing to be done or engage in any course of conduct, if his purpose, or any of his purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, is to create a false or misleading appearance —

- (a) of active trading in any futures contract on a futures market or in connection with leveraged foreign exchange trading; or
- (b) 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.

(2) No person shall do any thing, cause any thing to be done or engage in any course of conduct that creates, or is likely to create, a false or misleading appearance of active trading in any futures contract on a futures market or in connection with leveraged foreign exchange trading, or 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, if —

- (a) he knows that doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance; or
- (b) he is reckless as to whether doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, will create, or will be likely to create, that false or misleading appearance.”.

Amendment of section 232

44. Section 232 of the principal Act is amended —

- (a) by deleting the words “payable to the Authority” in subsection (6) and substituting the words “paid into the Consolidated Fund”; and
- (b) by inserting, immediately after the words “recover the civil penalty” in subsection (7), the words “on behalf of the Government”.

Amendment of section 234

45. Section 234 of the principal Act is amended —

- (a) by deleting the words “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,” in subsection (1) and substituting the words “(referred to in this section and sections 235 and 236 as the contravening person) shall, if he had gained a profit or avoided a loss as a result of that contravention,”;
- (b) by deleting sub-paragraph (ii) of subsection (1)(b) and substituting the following sub-paragraph:
 - “(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 —

(A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1), as the case may be, had been generally available; or

(B) in any other case, the contravention had not occurred.”;

(c) by inserting, immediately after subsection (1), the following subsection:

“(1A) Without prejudice to subsection (1), the contravening person shall, whether or not he had gained a profit or avoided a loss as a result of that contravention, and 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 the claimant, if —

(a) the contravening person has contravened section 199, 200, 201, 209 or 210, in connection with any subscription, purchase or sale of securities, any trading in futures contracts or any leveraged foreign exchange trading, by —

(i) making, disseminating or publishing any false, misleading or deceptive statement, information, promise or forecast; or

(ii) concealing or omitting to state any material fact; and

(b) the claimant —

(i) in reliance on that statement, information, promise or forecast or in

ignorance of that concealed or omitted material fact, had (whether contemporaneously with the contravention or otherwise) subscribed for, purchased or sold any securities, or entered into any futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and

(ii) had suffered loss.”;

(d) by deleting subsection (2) and substituting the following subsections:

“(2) The amount of compensation that the contravening person is liable to pay to the claimant under subsection (1) is the amount of the loss suffered by the claimant referred to in subsection (1)(b), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L, up to the maximum amount recoverable.

(2A) The amount of compensation that the contravening person is liable to pay to the claimant under subsection (1A) is —

(a) in any case where the claimant had contemporaneously with the contravention subscribed for, purchased or sold any securities, or entered into any futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description, and had suffered the loss referred to in subsection (1)(b), any one of the following amounts that is elected by the claimant:

- (i) the amount of the loss suffered by the claimant referred to in subsection (1)(b), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L, up to the maximum amount recoverable; or
 - (ii) the amount of any loss that reasonably results from the claimant's reliance on the statement, information, promise or forecast referred to in subsection (1A)(a)(i) or ignorance of the concealed or omitted material fact referred to in subsection (1A)(a)(ii), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L; or
- (b) in any other case, the amount of any loss that reasonably results from the claimant's reliance on the statement, information, promise or forecast referred to in subsection (1A)(a)(i) or ignorance of the concealed or omitted material fact referred to in subsection (1A)(a)(ii), after deducting any amount of compensation paid or payable to the same claimant in respect of the same contravention under an order of court or an

agreement to pay by the contravening person or any defendant, defendant corporation or defendant partnership under Division 4 or 5 or under an order for disgorgement under section 236L.”;

- (e) by deleting the word “contemporaneous” in subsection (4);
- (f) by deleting the words “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),” in subsection (5) and substituting the words “For the purposes of this section, in determining whether any dealing in securities, trading in futures contracts or leveraged foreign exchange trading took place contemporaneously with the contravention,”; and
- (g) by deleting the words “to other claimants under this section in respect of the same contravention” in subsection (6) and substituting the words “, in respect of the same contravention, to other claimants (each being a claimant whose claim is one where the amount of compensation that the contravening person is liable to pay is specified under subsection (2) or (2A)(a)(i))”.

Amendment of section 236

46. Section 236 of the principal Act is amended —

- (a) by deleting the words “which resulted in his gaining a profit or avoiding a loss” in subsection (1); and
- (b) by deleting subsection (3) and substituting the following subsections:

“(3) Subject to subsection (3A), the relevant court may, after the expiry of the date fixed under subsection (1), make an order against the contravening person to pay compensation to each claimant who has filed and proven his claim for compensation.

(3A) Where the amount of compensation that a claimant would have been entitled if he had brought

an action under section 234 is specified under section 234(2) or (2A)(a)(i), the compensation amount ordered by the relevant court for that claimant shall be equal to the lesser of the following amounts:

- (a) the amount of compensation which that claimant has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 234 against the contravening person himself;
- (b) the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (a) bears to the total amount of all other claims (each being a claim the claimant of which is one who, if he had brought an action under section 234, would have been entitled to the amount of compensation specified under section 234(2) or (2A)(a)(i)) which have been proved to the court.”.

Amendment of section 236D

47. Section 236D(1) of the principal Act is amended by deleting sub-paragraph (ii) of paragraph (b) and substituting the following sub-paragraph:

- “(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 —
 - (A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1), as the case may be, had been generally available; or

- (B) in any other case, the contravention by the contravening person had not occurred.”.

Amendment of section 236G

48. Section 236G(1) of the principal Act is amended by deleting sub-paragraph (ii) of paragraph (b) and substituting the following sub-paragraph:

“(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 —

(A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1), as the case may be, had been generally available; or

(B) in any other case, the contravention by the contravening person had not occurred.”.

Amendment of section 236I

49. Section 236I(1) of the principal Act is amended by deleting sub-paragraph (ii) of paragraph (b) and substituting the following sub-paragraph:

“(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 —

(A) in any case where the contravening person had acted in contravention of section 218 or 219, the information referred to in section 218(1) or 219(1), as the case may be, had been generally available; or

(B) in any other case, the contravention by the contravening person had not occurred.”.

Repeal and re-enactment of section 237

50. Section 237 of the principal Act is repealed and the following section substituted therefor:

“Jurisdiction of District Court

237. A District Court shall have jurisdiction to hear and determine any action or application under Division 4 or 5 regardless of the monetary amount.”.

Amendment of section 238

51. Section 238(1) of the principal Act is amended by deleting the words “and any application under section 236L” in paragraph (a).

Amendment of section 239

52. Section 239(1) of the principal Act is amended —

(a) by inserting, immediately after the definition of “preliminary document”, the following definition:

““product highlights sheet” means a product highlights sheet referred to in section 240AA(1);”; and

(b) by deleting paragraphs (a) and (b) of the definition of “prospectus” and substituting the following paragraphs:

“(a) a profile statement;

(b) any material, advertisement or publication which is authorised by section 251 (other than subsection (5)); or

(c) a product highlights sheet;”.

New section 240AA

53. The principal Act is amended by inserting, immediately after section 240, the following section:

“Requirement for product highlights sheet, where relevant

240AA.—(1) No person shall make an offer of any relevant securities, being an offer that is made in or accompanied by a prospectus or profile statement that complies with section 240, unless the prospectus or profile statement is accompanied by a product highlights sheet in respect of the offer —

(a) that complies with such requirements as may be prescribed by the Authority by regulations made under section 341; and

(b) a copy of which is lodged with the Authority.

(2) No person shall publish or disseminate, whether in Singapore or elsewhere, any document relating to any offer or intended offer of any relevant securities, being an offer that is, or an intended offer that will be, made in or accompanied by a prospectus or profile statement that complies with section 240, if the document resembles or may otherwise be confused with a product highlights sheet, unless he is required to do so —

(a) under any written law or rule of law, or by any court, in Singapore;

(b) under the laws and practices of, or by any court in, any foreign jurisdiction; or

(c) by any listing rules or other requirements of any securities exchange, futures exchange, overseas securities exchange or overseas futures exchange.

(3) The Authority may, for public information, publish —

(a) a product highlights sheet lodged with the Authority under this section; and

(b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1).

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a

further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) In this section —

“asset-backed securities” has the same meaning as in section 262(3);

“relevant securities” means —

- (a) asset-backed securities;
- (b) structured notes; or
- (c) such other securities as the Authority may prescribe by regulations made under section 341;

“single purpose vehicle” means an entity that is established solely in order to, or a trust that is established solely in order for its trustee to, do either or both of the following:

- (a) act as counterparty to arrangements which involve the use of derivatives to create exposure to assets from which payments to holders of any structured notes are or will be primarily derived;
- (b) issue any structured notes;

“specified financial institution” means —

- (a) any bank licensed under the Banking Act (Cap. 19); or
- (b) any entity that is, or that belongs to a class of entities that is, specified by the Authority, by notification published in the *Gazette*, to be an entity, or a class of entities, for the purposes of this definition;

“structured notes” means any type of debentures or units of debentures —

- (a) which is issued —
 - (i) in relation to —
 - (A) a synthetic securitisation transaction;

or

-
-
- (B) such other arrangement or transaction as may be prescribed by the Authority by regulations made under section 341; or
 - (ii) by a specified financial institution; and
- (b) for which —
- (i) the principal sum or any interest is, or both are, payable;
 - (ii) such other sum or sums as may be prescribed by the Authority, by regulations made under section 341, is or are payable;
 - (iii) one or more underlying assets, being securities, equity interests, commodities, currencies or such other assets as may be prescribed by the Authority by regulations made under section 341, are to be physically delivered; or
 - (iv) 2 or more of sub-paragraphs (i), (ii) and (iii) apply,

in accordance with a formula based on one or more of the following:

- (A) the performance of any type of securities, equity interest, commodity or index, or of a basket of 2 or more types of securities, equity interests, commodities or indices;
- (B) the credit risk or performance of any entity or a basket of entities;
- (C) the movement of interest rates or currency exchange rates;
- (D) such other variables as may be prescribed by the Authority by regulations made under section 341;

“synthetic securitisation transaction” means an arrangement involving the use of derivatives to create or replicate exposure to assets that are not transferred to, or are not a part of an asset pool held by, a single purpose vehicle.”.

Amendment of section 251

54. Section 251 of the principal Act is amended —

(a) by deleting subsections (4) and (5) and substituting the following subsections:

“(4) Notwithstanding subsection (6), a person does not contravene subsection (1) —

(a) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 275(2) or persons to whom an offer referred to in section 275(1A) is to be made; or

(b) by presenting oral or written material on matters contained in a prospectus, profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of securities, before the prospectus or profile statement is registered by the Authority, for the sole purpose of equipping any of the following persons with knowledge of the securities in order to enable the person to carry on the regulated activity of dealing in securities, or to provide any financial advisory service, in relation to the securities:

(i) a person licensed under this Act in respect of dealing in securities;

(ii) an exempt person;

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- (iii) a person who is a representative in respect of dealing in securities under this Act;
 - (iv) a representative of an exempt person;
 - (v) a person licensed under the Financial Advisers Act (Cap. 110) in respect of advising on any investment product;
 - (vi) an exempt financial adviser;
 - (vii) a person who is a representative in respect of advising on any investment product under the Financial Advisers Act;
 - (viii) a representative of an exempt financial adviser.

(5) For the avoidance of doubt, a person may disseminate either or both of the following without contravening subsection (1):

- (a) a prospectus or profile statement that has been registered by the Authority under section 240;
- (b) a product highlights sheet in respect of which section 240AA(1)(a) and (b) has been complied with.”;

(b) by deleting the word “and” at the end of subsection (8)(b);

(c) by deleting the full-stop at the end of paragraph (c) of subsection (8) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(d) it complies with such requirements as may be prescribed by the Authority by regulations made under section 341.”;

(d) by inserting, at the end of subsection (9)(e)(iv), the word “or”;

(e) by inserting, immediately after sub-paragraph (iv) of subsection (9)(e), the following sub-paragraph:

“(v) a product highlights sheet;” and
(f) by inserting, immediately after subsection (18), the following subsection:

“(18A) In subsection (4) —

“exempt financial adviser” and “financial advisory service” have the same meanings as in section 2(1) of the Financial Advisers Act;

“representative” —

- (a) in relation to dealing in securities under this Act or an exempt person, has the same meaning as in section 2(1); or
- (b) in relation to advising on any investment product under the Financial Advisers Act or an exempt financial adviser, has the same meaning as in section 2(1) of that Act.”.

New section 265A

55. The principal Act is amended by inserting, immediately after section 265, the following section:

“Requirement for trustees

265A.—(1) Where an offer of debentures is made in or accompanied by a prospectus, the borrowing entity shall appoint a trustee for the holders of debentures (referred to in this section as the appointed trustee) for the entire tenure of the debentures.

(2) The borrowing entity shall ensure that —

- (a) where the debentures are asset-backed securities or structured notes, the appointed trustee is any of the following persons:
 - (i) a holder of a trust business licence under the Trust Companies Act (Cap. 336) that is carrying on business in Singapore in that capacity;

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- (ii) a bank licensed under the Banking Act (Cap. 19) that is carrying on business in Singapore in that capacity;
 - (iii) an approved trustee referred to in section 289 that is carrying on business in Singapore in that capacity;
 - (iv) such other person as may be prescribed by the Authority by regulations made under section 341;
- (b) where the debentures are not asset-backed securities or structured notes, the appointed trustee is any of the following persons:
- (i) a holder of a trust business licence under the Trust Companies Act that is carrying on business in Singapore in that capacity;
 - (ii) a bank licensed under the Banking Act that is carrying on business in Singapore in that capacity;
 - (iii) an approved trustee referred to in section 289 that is carrying on business in Singapore in that capacity;
 - (iv) any other person whom the borrowing entity is satisfied, on reasonable grounds, is, and will be, able to take timely and appropriate action on behalf of the holders of debentures, in the event of a default or as required by the trust deed;
 - (v) such other person as may be prescribed by the Authority by regulations made under section 341;
- (c) the appointed trustee is independent of the borrowing entity, guarantor entity, arranger and counterparty of the debentures; and
- (d) the appointed trustee meets such requirements as may be prescribed by the Authority by regulations made under section 341.

(3) For the purposes of subsection (2)(b)(iv), the borrowing entity shall, before being satisfied that a person is, and will be, able to take timely and appropriate action on behalf of the holders of debentures, in the event of a default or as required by the trust deed, consider the following matters:

- (a) whether the person is licensed or regulated in the jurisdiction —
 - (i) in which the person was incorporated or formed;
or
 - (ii) of the person’s principal place of business;
- (b) the contractual arrangements between the borrowing entity and the person;
- (c) whether, if the person is the appointed trustee, the duties which will be imposed on the person by way of the trust deed, or under the laws and practices of the jurisdiction referred to in paragraph (a), are at least equivalent to those imposed under section 266(1); and
- (d) such other matters as may be prescribed by the Authority by regulations made under section 341.

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) In this section —

“asset-backed securities” has the same meaning as in section 262(3);

“structured notes” has the same meaning as in section 240AA(5).”.

Amendment of section 266

56. Section 266 of the principal Act is amended by inserting, immediately before subsection (2), the following subsection:

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- “(1) A trustee for the holders of debentures shall —
- (a) at all times exercise due diligence and vigilance in carrying out its functions and duties, and in safeguarding the rights and interests of the holders of debentures;
 - (b) ensure that it has the ability and powers to perform all of its duties as set out in the trust deed;
 - (c) ensure that any trustee appointed for the holders of any collateral upon which the debentures are secured is subject to duties that are at least equivalent to those imposed under paragraphs (a) and (b); and
 - (d) comply with such other requirements as may be prescribed by the Authority by regulations made under section 341, or as may be imposed by the Authority in respect of any particular offer or transaction relating to the debentures.”.

Amendment of section 268

57. Section 268 of the principal Act is amended —

- (a) by deleting subsections (1), (2) and (3);
- (b) by deleting the words “with the Authority and” in subsection (6);
- (c) by inserting, immediately after subsection (6), the following subsection:
 - “(6A) Any person who furnishes any information contained in a profit and loss account or balance-sheet required under subsection (6) shall use due care to ensure that the information is not false or misleading in any material particular.”;
- (d) by inserting, immediately after subsection (7), the following subsection:
 - “(7A) Any person who contravenes subsection (6A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to

imprisonment for a term not exceeding 2 years or to both.”; and

(e) by deleting subsection (9) and substituting the following subsection:

“(9) Where the directors or equivalent persons of a borrowing entity, or the directors or equivalent persons of a guarantor entity, do not lodge with the trustee the profit and loss accounts and balance-sheets as required under subsection (6) within the time prescribed under that subsection, the trustee shall immediately lodge notice of that fact with the Authority.”.

New section 268A

58. The principal Act is amended by inserting, immediately after section 268, the following section:

“Additional obligations of borrowing entity, where debentures are not listed on securities exchange

268A.—(1) A borrowing entity that issues any debentures which are not listed on a securities exchange (referred to in this section as unlisted debentures) shall, if the unlisted debentures have a tenure of 12 months or longer, prepare and make available to the holders of the debentures, in respect of the period of 6 months beginning on the date of issuance of the debentures and each subsequent period of 6 months, a report covering the period of 6 months (referred to in this section as a semi-annual report), in accordance with this section and such other requirements as may be prescribed by the Authority by regulations made under section 341.

(2) The borrowing entity shall ensure that each semi-annual report covering a period of 6 months is lodged with the trustee for the holders of the unlisted debentures, not later than 2 months after the end of that period.

(3) Where the borrowing entity does not lodge with the trustee for the holders of unlisted debentures a semi-annual report as

required under subsection (2), the trustee shall immediately lodge notice of that fact with the Authority.

(4) A borrowing entity shall immediately disclose, in such form and manner as may be prescribed by the Authority by regulations made under section 341, to holders of unlisted debentures any information which may materially affect —

- (a) the risks and returns of the unlisted debentures; or
- (b) the price or value of the unlisted debentures.

(5) Any person who contravenes subsection (1), (2) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

(6) Where the terms of any unlisted debentures provide for redemption at the option of the holder of the unlisted debentures, the borrowing entity shall —

- (a) make available bid or redemption prices of the unlisted debentures, at the frequency at which the borrowing entity has committed to buying back the unlisted debentures or once every fortnight, whichever is more frequent, in such form and manner as may be prescribed by the Authority by regulations made under section 341;
- (b) if the published bid prices are indicative and may not be the actual bid prices, clearly state this fact, wherever the published bid prices appear, in such form and manner as may be prescribed by the Authority by regulations made under section 341; and
- (c) ensure that the bid or redemption prices are determined in an independent and fair manner.

(7) A borrowing entity shall ensure that each profit and loss account or balance-sheet that its directors or equivalent persons are required to lodge under section 268(6) is made available, in such form and manner as may be prescribed by the Authority by regulations made under section 341, to holders of unlisted

debentures, on the day of lodgment of the profit and loss account or balance-sheet, as the case may be, with the trustee for the holders of the unlisted debentures.

(8) Any person who contravenes subsection (6) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(9) Any person who furnishes any information contained in a semi-annual report required under subsection (2) shall use due care to ensure that the information is not false or misleading in any material particular.

(10) Any person who contravenes subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.”.

Amendment of section 273

59. Section 273 of the principal Act is amended by inserting, immediately after subsection (8), the following subsections:

“(8A) A person shall not advertise an offer or intended offer of any securities referred to in subsection (1)(d) or (e), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the securities, unless the advertisement or publication complies with such requirements as may be prescribed by the Authority by regulations made under section 341.

(8B) Any person who contravenes subsection (8A), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or

part thereof during which the offence continues after conviction.”.

Amendment of section 277

60. Section 277 of the principal Act is amended by inserting, immediately after subsection (6), the following subsections:

“(7) A person shall not advertise an offer or intended offer of any securities referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the securities, unless the advertisement or publication complies with such requirements as may be prescribed by the Authority by regulations made under section 341.

(8) Any person who contravenes subsection (7), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.”.

New Subdivision (5) of Division 1 of Part XIII

61. The principal Act is amended by inserting, immediately after section 282, the following Subdivision:

“Subdivision (5) — General

Power of Authority to issue directions

282AA.—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue directions, whether of a general or specific nature, by notice in writing —

(a) to a person making an offer of securities, being an offer made in or accompanied by a prospectus or profile

statement or an offer referred to in section 280, on matters in connection with the offer;

(b) to a person referred to in paragraph (a) who is a borrowing entity, on matters in connection with the requirements and obligations under Subdivision (3) of this Division, in addition to the matters referred to in paragraph (a); or

(c) to a trustee appointed under section 265A(1).

(2) Any person to whom a notice is given under subsection (1) shall comply with every direction contained in the notice.

(3) It shall not be necessary to publish any direction issued under subsection (1) in the *Gazette*.

(4) Any person who contravenes a direction 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.

(5) No criminal or civil liability shall be incurred by a trustee appointed under section 265A(1), or by any person acting on behalf of such a trustee, for any thing done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of, or in connection with, the compliance or purported compliance with a direction issued to the trustee under subsection (1).”.

Amendment of section 282L

62. Section 282L of the principal Act is amended —

(a) by deleting subsection (4) and substituting the following subsection:

“(4) Notwithstanding subsection (6), a person does not contravene subsection (1) —

(a) by presenting, before a prospectus or profile statement is registered by the Authority, oral or

written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 282Z(3) or persons to whom an offer referred to in section 282Z(2) is to be made; or

- (b) by presenting oral or written material on matters contained in a prospectus or profile statement which has been lodged with the Authority in respect of an offer of units or derivatives of units in a business trust, before the prospectus or profile statement is registered by the Authority, for the sole purpose of equipping any of the following persons with knowledge of the units or derivatives of units in a business trust in order to enable the person to carry on the regulated activity of dealing in securities, or to provide any financial advisory service, in relation to the units or derivatives of units in a business trust:
- (i) a person licensed under this Act in respect of dealing in securities;
 - (ii) an exempt person;
 - (iii) a person who is a representative in respect of dealing in securities under this Act;
 - (iv) a representative of an exempt person;
 - (v) a person licensed under the Financial Advisers Act (Cap. 110) in respect of advising on any investment product;
 - (vi) an exempt financial adviser;
 - (vii) a person who is a representative in respect of advising on any investment product under the Financial Advisers Act;

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- (viii) a representative of an exempt financial adviser.”;
- (b) by deleting the word “and” at the end of subsection (8)(b);
- (c) by deleting the full-stop at the end of paragraph (c) of subsection (8) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:
- “(d) it complies with such requirements as may be prescribed by the Authority by regulations made under section 341.”; and
- (d) by inserting, immediately after subsection (18), the following subsection:
- “(18A) In subsection (4) —
- “exempt financial adviser” and “financial advisory service” have the same meanings as in section 2(1) of the Financial Advisers Act;
- “representative” —
- (a) in relation to dealing in securities under this Act or an exempt person, has the same meaning as in section 2(1); or
- (b) in relation to advising on any investment product under the Financial Advisers Act or an exempt financial adviser, has the same meaning as in section 2(1) of that Act.”.

Amendment of section 282X

63. Section 282X of the principal Act is amended by inserting, immediately after subsection (8), the following subsections:

“(8A) A person shall not advertise an offer or intended offer of any units in a business trust referred to in subsection (1)(d) or any derivatives of units in a business trust referred to in subsection (1)(e), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or

purchase the units or derivatives of units, unless the advertisement or publication complies with such requirements as may be prescribed by the Authority by regulations made under section 341.

(8B) Any person who contravenes subsection (8A), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of section 282ZB

64. Section 282ZB of the principal Act is amended by inserting, immediately after subsection (7), the following subsections:

“(8) A person shall not advertise an offer or intended offer of any units or derivatives of units in a business trust referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the units or derivatives of units, unless the advertisement or publication complies with such requirements as may be prescribed by the Authority by regulations made under section 341.

(9) Any person who contravenes subsection (8), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.”.

New Subdivision (5) of Division 1A of Part XIII

65. The principal Act is amended by inserting, immediately after section 282ZF, the following Subdivision:

“Subdivision (5) — General

Power of Authority to issue directions

282ZG.—(1) The Authority may, where it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors, issue directions, whether of a general or specific nature, by notice in writing, to a person making an offer of units or derivatives of units in a business trust, being an offer made in or accompanied by a prospectus or profile statement or an offer referred to in section 282ZC, on matters in connection with the offer.

(2) Any person to whom a notice is given under subsection (1) shall comply with every direction contained in the notice.

(3) It shall not be necessary to publish any direction issued under subsection (1) in the *Gazette*.

(4) Any person who contravenes a direction 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.”.

Amendment of section 283

66. Section 283(1) of the principal Act is amended —

(a) by inserting, immediately after the definition of “preliminary document”, the following definition:

““product highlights sheet” means a product highlights sheet referred to in section 296A(1);” and

(b) by deleting paragraphs (a) and (b) of the definition of “prospectus” and substituting the following paragraphs:

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- “(a) a profile statement;
- (b) any material, advertisement or publication which is authorised by section 300 (other than subsection (3)); or
- (c) a product highlights sheet;”.

Amendment of section 286

67. Section 286 of the principal Act is amended —

- (a) by deleting subsection (1) and substituting the following subsections:

“(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, authorise a collective investment scheme constituted in Singapore, subject to —

- (a) subsection (2);
- (b) the conditions specified in subsection (3); and
- (c) such conditions or restrictions as the Authority may think fit to impose by notice in writing.

(1A) The Authority may, at any time, by notice in writing to the responsible person for a collective investment scheme authorised under subsection (1), vary or revoke any condition or restriction imposed by the Authority under subsection (1)(c) or impose such further condition or restriction as the Authority may think fit.”; and

- (b) by inserting, immediately after the words “subsections (2), (3) and (4)” in subsection (10), the words “, and every condition or restriction imposed by the Authority under subsection (1)(c) or (1A),”.

Amendment of section 287

68. Section 287 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

“(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, recognise a collective investment scheme constituted outside Singapore, subject to —

(a) subsection (2);

(b) the conditions specified in subsection (3); and

(c) such conditions or restrictions as the Authority may think fit to impose by notice in writing.

(1A) The Authority may, at any time, by notice in writing to the responsible person for a collective investment scheme recognised under subsection (1), vary or revoke any condition or restriction imposed by the Authority under subsection (1)(c) or impose such further condition or restriction as the Authority may think fit.”; and

(b) by inserting, immediately after the words “subsections (2) and (3),” in subsection (9), the words “and every condition or restriction imposed by the Authority under subsection (1)(c) or (1A),”.

Amendment of section 289

69. Section 289 of the principal Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

“(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, approve a public company to act as a trustee for collective investment schemes which are authorised

under section 286 and constituted as unit trusts (referred to in this Subdivision as an approved trustee), subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing.

(1A) The Authority may, at any time, by notice in writing to the approved trustee, vary or revoke any condition or restriction imposed by the Authority under subsection (1) or impose such further condition or restriction as the Authority may think fit.”;

- (b) by inserting, immediately after the words “subsection (2)” in subsection (3), the words “and every condition or restriction imposed by the Authority under subsection (1) or (1A)”;
- (c) by inserting, immediately after the words “subsection (2)” in subsection (4)(a), the words “, or any condition or restriction imposed by the Authority under subsection (1) or (1A)”;
- (d) by deleting subsection (6) and substituting the following subsection:

“(6) It shall not be necessary to publish any direction issued under subsection (4) in the *Gazette*.”.

Amendment of section 293

70. Section 293 of the principal Act is amended —

- (a) by deleting the words “it appears to the Authority to be necessary or expedient in the public interest to do so” in subsection (1) and substituting the words “it thinks it necessary or expedient in the interests of the public or a section of the public or for the protection of investors”; and
- (b) by deleting subsection (3) and substituting the following subsection:

“(3) It shall not be necessary to publish any direction issued under subsection (1) in the *Gazette*.”.

New section 296A

71. The principal Act is amended by inserting, immediately after section 296, the following section:

“Requirement for product highlights sheet, where relevant

296A.—(1) No person shall make an offer of units in a collective investment scheme, being an offer that is made in or accompanied by a prospectus or profile statement that complies with section 296, unless the prospectus or profile statement is accompanied by a product highlights sheet in respect of the offer —

(a) that complies with such requirements as may be prescribed by the Authority by regulations made under section 341; and

(b) a copy of which is lodged with the Authority.

(2) No person shall publish or disseminate, whether in Singapore or elsewhere, any document relating to any offer or intended offer of units in a collective investment scheme or proposed collective investment scheme, being an offer that is, or an intended offer that will be, made in or accompanied by a prospectus or profile statement that complies with section 296, if the document resembles or may otherwise be confused with a product highlights sheet, unless he is required to do so —

(a) under any written law or rule of law, or by any court, in Singapore;

(b) under the laws and practices of, or by any court in, any foreign jurisdiction; or

(c) by any listing rules or other requirements of any securities exchange, futures exchange, overseas securities exchange or overseas futures exchange.

(3) The Authority may, for public information, publish —

(a) a product highlights sheet lodged with the Authority under this section; and

(b) where applicable, the translation thereof in the English language lodged with the Authority under section 318A(1).

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) Without prejudice to section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons, any prospectus or profile statement, or any units in a collective investment scheme or proposed collective investment scheme, from any provision of this section, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(6) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any person, prospectus or profile statement, or any units in a collective investment scheme or proposed collective investment scheme, from any provision of this section, subject to such conditions or restrictions as the Authority may specify by notice in writing.

(7) It shall not be necessary to publish any exemption granted under subsection (6) in the *Gazette*.

(8) Every person who is granted an exemption under subsection (5), or who wishes to rely on an exemption granted under that subsection, shall satisfy every condition or restriction imposed under that subsection for the grant of the exemption.

(9) Every person who is granted an exemption under subsection (6), or who wishes to rely on an exemption granted under that subsection, shall, for the duration of the exemption, satisfy every condition or restriction imposed under that subsection for the grant of the exemption.

(10) Any person who contravenes subsection (8) or (9) shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of section 297

72. Section 297 of the principal Act is amended by deleting subsection (6) and substituting the following subsection:

“(6) It shall not be necessary to publish any direction issued under subsection (4) in the *Gazette*.”.

Amendment of section 300

73. Section 300 of the principal Act is amended —

(a) by deleting subsection (2B) and substituting the following subsection:

“(2B) Notwithstanding subsection (3A), a person does not contravene subsection (1) —

- (a) by presenting, before a prospectus or profile statement is registered by the Authority, oral or written material on matters contained in a preliminary document which has been lodged with the Authority, to institutional investors, relevant persons as defined in section 305(5) or persons to whom an offer referred to in section 305(2) is to be made; or
- (b) by presenting oral or written material on matters contained in a prospectus, profile statement or product highlights sheet which has been lodged with the Authority in respect of an offer of units in a collective investment scheme, before the prospectus or profile statement is registered by the Authority, for the sole purpose of equipping any of the following persons with knowledge of the collective investment scheme in order to enable the person to carry on the regulated activity of dealing in securities, or to provide

any financial advisory service, in relation to the units in the collective investment scheme:

- (i) a person licensed under this Act in respect of dealing in securities;
- (ii) an exempt person;
- (iii) a person who is a representative in respect of dealing in securities under this Act;
- (iv) a representative of an exempt person;
- (v) a person licensed under the Financial Advisers Act (Cap. 110) in respect of marketing of collective investment schemes;
- (vi) an exempt financial adviser;
- (vii) a person who is a representative in respect of marketing of collective investment schemes under the Financial Advisers Act;
- (viii) a representative of an exempt financial adviser.”;

(b) by deleting subsection (2C);

(c) by deleting subsection (3) and substituting the following subsection:

“(3) For the avoidance of doubt, a person may disseminate either or both of the following without contravening subsection (1):

- (a) a prospectus or profile statement that has been registered by the Authority under section 296;
- (b) a product highlights sheet in respect of which section 296A(1)(a) and (b) has been complied with.”;

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- (d) by inserting, immediately after the words “prescribed by the Authority” in subsection (3C), the words “by regulations made under section 341”;
 - (e) by deleting the word “or” at the end of subsection (4)(c)(iii);
 - (f) by inserting, at the end of subsection (4)(c)(iv), the word “or”;
 - (g) by inserting, immediately after sub-paragraph (iv) of subsection (4)(c), the following sub-paragraph:
 - “(v) a product highlights sheet;” and
 - (h) by inserting, immediately after subsection (12), the following subsection:

“(13) In subsection (2B) —

“exempt financial adviser” and “financial advisory service” have the same meanings as in section 2(1) of the Financial Advisers Act;

“representative” —

- (a) in relation to dealing in securities under this Act or an exempt person, has the same meaning as in section 2(1); or
- (b) in relation to marketing of collective investment schemes under the Financial Advisers Act or an exempt financial adviser, has the same meaning as in section 2(1) of that Act.”.

Amendment of section 301

74. Section 301 of the principal Act is amended by deleting subsection (6) and substituting the following subsection:

“(6) It shall not be necessary to publish any direction issued under subsection (2) in the *Gazette*.”.

Amendment of section 303

75. Section 303 of the principal Act is amended by inserting, immediately after subsection (2), the following subsections:

“(3) A person shall not advertise an offer or intended offer of any units in a collective investment scheme referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the units, unless the advertisement or publication complies with such requirements as may be prescribed by the Authority by regulations made under section 341.

(4) Any person who contravenes subsection (3), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of section 305B

76. Section 305B of the principal Act is amended by inserting, immediately after subsection (7), the following subsections:

“(8) A person shall not advertise an offer or intended offer of any units in a collective investment scheme referred to in subsection (1), or publish a statement that directly or indirectly refers to the offer or intended offer, or that is reasonably likely to induce persons to subscribe for or purchase the units, unless the advertisement or publication complies with such requirements as may be prescribed by the Authority by regulations made under section 341.

(9) Any person who contravenes subsection (8), or who knowingly authorises or permits the publication or dissemination of any advertisement or statement referred to in that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for

every day or part thereof during which the offence continues after conviction.”.

New Division 4 of Part XIII

77. The principal Act is amended by inserting, immediately after section 309, the following Division:

“Division 4 — Capital Markets Products

Interpretation of this Division

309A.—(1) In this Division, unless the context otherwise requires —

“issuer” means —

- (a) in relation to an offer of units in a collective investment scheme, the responsible person for the collective investment scheme;
- (b) in relation to an offer of any contract or arrangement in connection with leveraged foreign exchange trading, the holder of a capital markets services licence for leveraged foreign exchange trading that is the counterparty to that contract or arrangement; or
- (c) in relation to an offer of any other capital markets products, the entity that issues or will issue the capital markets products being offered;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of any capital markets products;

“relevant person” means —

- (a) a holder of a capital markets services licence;
- (b) a person who is exempted under section 99(1)(a) or (b) from the requirement to hold a capital markets services licence;

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- (c) a person licensed under the Financial Advisers Act (Cap. 110) in respect of advising on any investment product;
 - (d) a person who is exempted under section 23(1)(a), (b), (c), (d) or (e) of the Financial Advisers Act from holding a financial adviser's licence;
 - (e) such other person as may be prescribed by the Authority by regulations made under section 341; or
 - (f) a representative of any person referred to in paragraph (a), (b), (c), (d) or (e).
- (2) For the purposes of this Part, a person makes an offer of any capital markets products 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 capital markets products 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 capital markets products by him or another person with whom he has made arrangements for that issue or sale.
- (3) In subsection (2), “sale” includes any disposal for valuable consideration.
- (4) For the avoidance of doubt, the obligations imposed by this Division in relation to any capital markets products are in addition to the obligations imposed under Divisions 1, 1A, 2 and 3 in relation to those capital markets products.

Obligation of issuer to determine, and to notify approved exchange and relevant person of, classification of capital markets products

309B.—(1) No issuer shall make an offer of any capital markets products unless —

- (a) the issuer has determined the classification of those capital markets products;
- (b) where those capital markets products are or will be listed for quotation or quoted on a market operated by an approved exchange, the issuer has notified the approved exchange in writing of the classification of those capital markets products; and
- (c) where those capital markets products are or will be offered through any relevant person, the issuer has notified that relevant person in writing of the classification of those capital markets products.

(2) No relevant person shall make an offer of any capital markets products unless the relevant person has received a notification under subsection (1)(c) in respect of those capital markets products.

(3) Where, after any notification has been given under subsection (1)(b) or (c) or this subsection in respect of any capital markets products, there is a change in the classification of those capital markets products, the issuer of those capital markets products shall, within such time as may be prescribed by the Authority by regulations made under section 341 —

- (a) if those capital markets products are or will be listed for quotation or quoted on an approved exchange, notify the approved exchange in writing of the new classification of those capital markets products; and
- (b) if those capital markets products are or will be offered through any relevant person, notify that relevant person in writing of the new classification of those capital markets products.

(4) Without prejudice to section 337(1), the Authority may, by regulations made under section 341, exempt any person or class of persons from any provision of this section, subject to such conditions or restrictions as the Authority may prescribe in those regulations.

(5) Without prejudice to section 337(3) and (4), the Authority may, by notice in writing, exempt any person from any provision of this section, subject to such conditions or restrictions as the Authority may specify by notice in writing.

(6) It shall not be necessary to publish any exemption granted under subsection (5) in the *Gazette*.

(7) Every person who is granted an exemption under subsection (4) shall satisfy every condition or restriction imposed on him under that subsection.

(8) Every person who is granted an exemption under subsection (5) shall satisfy every condition or restriction imposed on him under that subsection.

(9) Any person who contravenes subsection (1), (2), (3), (7) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) In this section —

“classification”, in relation to any capital markets products, means the classification of the capital markets products as either of the following:

(a) prescribed capital markets products;

(b) capital markets products other than prescribed capital markets products;

“prescribed capital markets products” means any capital markets products that belong to any class of capital markets products that is prescribed by the Authority, by regulations made under section 341, for the purposes of this definition.

Use of term “capital protected” or “principal protected”

309C.—(1) No person shall, when describing or referring to any capital markets products which are, will be or have been the

subject of an offer or intended offer, do either or both of the following:

- (a) use the term “capital protected” or any of its derivatives in any language in the name or description or any representation of those capital markets products, or within any prospectus relating to those capital markets products;
- (b) use the term “principal protected” or any of its derivatives in any language in the name or description or any representation of those capital markets products, or within any prospectus relating to those capital markets products.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Use of term “product highlights sheet”

309D.—(1) No person shall, when describing or referring to any publication in respect of any offer or intended offer of any capital markets products, use the term “product highlights sheet” or any of its derivatives in any language in the name or description or any representation of that publication, unless —

- (a) that publication is a product highlights sheet —
 - (i) in respect of an offer that is made in or accompanied by a prospectus or profile statement that complies with section 240; and
 - (ii) in respect of which section 240AA(1)(a) and (b) has been complied with;
- (b) that publication is a product highlights sheet —
 - (i) in respect of an offer that is made in or accompanied by a prospectus or profile statement that complies with section 296; and

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- (ii) in respect of which section 296A(1)(a) and (b) has been complied with;
- (c) that person belongs to any class of persons declared by the Authority, by order published in the *Gazette*, to be a class of persons who may, when describing or referring to any publication in respect of any offer or intended offer of such capital markets products as the Authority may specify in the order, use that term or any of its derivatives in any language in the name or description or any representation of that publication; or
- (d) the Authority has given consent in writing to that person to use that term or any of its derivatives in any language, when describing or referring to any publication in respect of any offer or intended offer of such capital markets products as the Authority may specify in writing, in the name or description or any representation of that publication.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of section 310

78. Section 310(2) of the principal Act is amended by inserting, immediately after the words “Part II,”, “IIA,”.

Amendment of section 311

79. Section 311 of the principal Act is amended —

- (a) by deleting the words “securities or futures industry” in subsection (3) and substituting the words “securities, futures or derivatives industry”;
- (b) by inserting, immediately after the words “an advocate and solicitor” in subsection (4), the words “, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97),”; and

- (c) by inserting, immediately after the words “An advocate and solicitor” in subsection (5), the words “, or a legal counsel referred to in section 128A of the Evidence Act,”.

Amendment of section 317

80. Section 317 of the principal Act is amended —

- (a) by deleting the words “Subject to sections 94 and 99C” in subsection (1) and substituting the words “Without prejudice to sections 94, 99C and 101A(7) and (8)”; and
- (b) by inserting, immediately after the words “section 94 or 99C” in subsection (2)(a), the words “, any records kept or published by the Authority under section 101A(7) and (8)”.

Amendment of section 322

81. Section 322 of the principal Act is amended —

- (a) by deleting the words “a person operating a clearing facility, a designated clearing house,” in subsection (1)(a) and substituting the words “a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house,”; and
- (b) by deleting the words “or a designated clearing house” in subsection (2)(g) and (h) and substituting in each case the words “, a licensed trade repository, a licensed foreign trade repository, an approved clearing house or a recognised clearing house”.

Amendment of section 324

82. Section 324 of the principal Act is amended —

- (a) by deleting subsection (1) and substituting the following subsections:

“(1) A court may, on an application by the Authority, make one or more of the orders referred to in subsection (1A), where —

- (a) an investigation is being carried out under this Act in relation to any act or omission by a

person, being an act or omission that constitutes or may constitute a contravention of this Act;

- (b) a criminal proceeding has been instituted against a person for an offence under this Act; or
- (c) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (a) or (b) or this paragraph (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.

(1A) The orders of court that may be made under subsection (1) are as follows:

- (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to the relevant person, or to another person at the direction or request of the relevant person;
- (b) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, 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 the relevant person, or to another person at the direction or request of the relevant person;
- (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;
 - (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of 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);
 - (e) an order appointing —
 - (i) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of the relevant person; or
 - (ii) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of the relevant person;
 - (f) where the relevant person is an individual, an order requiring the relevant person to deliver up to the court his passport and such other documents as the court thinks fit;

- (g) where the relevant person is an individual, an order prohibiting the relevant person from leaving Singapore without the consent of the court.”; and
- (b) by deleting the words “an order under subsection (1)” in subsection (2) and substituting the words “any order referred to in subsection (1A)”.

Amendment of section 325

83. Section 325(1) of the principal Act is amended —

- (a) by deleting the words “futures exchange, or designated clearing house” in paragraph (a)(ii) and substituting the words “a futures exchange, a licensed trade repository or an approved clearing house”;
- (b) by deleting the word “or” at the end of paragraph (c);
- (c) by deleting paragraph (d) and substituting the following paragraphs:
 - “(d) on the application of an approved clearing house, it appears to the court that a person has contravened the business rules of the approved clearing house; or
 - (e) on the application of a licensed trade repository, it appears to the court that a person has contravened the business rules of the licensed trade repository,”; and
- (d) by deleting the words “futures exchange or clearing house” in paragraph (i) and substituting the words “a futures exchange, a licensed trade repository or an approved clearing house”.

Amendment of section 326

84. Section 326 of the principal Act is amended by deleting subsection (10) and substituting the following subsection:

- “(10) Where the Authority or any person referred to in subsection (1)(b) or (2)(b) makes an application to the court

for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court shall not require the Authority or that person, as the case may be, or any other person, as a condition of granting the injunction, interim injunction, order or interim order, to give any undertaking as to damages.”.

Amendment of section 328

85. Section 328(2) of the principal Act is amended by deleting the words “person operating a clearing facility, designated clearing house,” in the definition of “relevant person” and substituting the words “licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house,”.

Amendment of section 330

86. Section 330 of the principal Act is amended —

- (a) by deleting the words “a securities exchange, futures exchange, designated clearing house” in subsection (1) and substituting the words “any securities exchange, futures exchange, licensed trade repository, approved clearing house or recognised clearing house”;
- (b) by deleting the words “futures exchange or a designated clearing house” in subsection (1)(b) and substituting the words “a futures exchange, a licensed trade repository or an approved clearing house”; and
- (c) by deleting the words “designated clearing house” in the section heading and substituting the words “licensed trade repository, approved clearing house, recognised clearing house”.

Amendment of section 332

87. Section 332(1) of the principal Act is amended by deleting the words “a designated clearing house,” and substituting the words “a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house”.

Amendment of section 334

88. Section 334(2) of the principal Act is amended —

- (a) by deleting the words “or designated clearing house” in paragraph (a)(iv) of the definition of “misconduct” and substituting the words “, a licensed trade repository or an approved clearing house”; and
- (b) by deleting the words “a person operating a clearing facility, a designated clearing house,” in the definition of “relevant person” and substituting the words “a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house,”.

Amendment of section 336

89. Section 336 of the principal Act is amended —

- (a) by inserting, immediately after the words “not exceeding” in subsection (2), the words “one half of the amount of”; and
- (b) by inserting, immediately after subsection (2), the following subsections:

“(3) The Authority may, in its discretion, compound any offence under this Act (including an offence under a provision that has been repealed) which —

- (a) was compoundable under this section at the time the offence was committed; but
- (b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.

(4) All sums collected by the Authority under subsection (2) or (3) shall be paid into the Consolidated Fund.”.

Amendment of section 338

90. Section 338(1) of the principal Act is amended by deleting the words “securities or futures industry” and substituting the words “securities, futures or derivatives industry”.

Amendment of section 339

91. Section 339(2) of the principal Act is amended by inserting, immediately after the words “Part II,” in paragraph (b), “IIA,”.

Amendment of section 341

92. Section 341 of the principal Act is amended —

(a) by deleting paragraph (f) of subsection (2) and substituting the following paragraph:

“(f) the conditions for the conduct of business on any securities exchange, futures exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house or recognised clearing house;”;

(b) by inserting, immediately after paragraph (a) of subsection (3), the following paragraph:

“(aa) may contain provisions of a savings or transitional nature;”;

(c) by inserting, immediately after subsection (3), the following subsections:

“(3A) For the purposes of paragraphs (a)(iv) and (b) of the definition of “derivatives contract” in section 2(1), the Authority may prescribe different contracts, arrangements, transactions and classes of contracts, arrangements or transactions for different purposes.

(3B) For the purposes of the definition of “financial instrument” in section 2(1), the Authority may prescribe different things for different purposes.

(3C) For the purposes of paragraphs (a)(iii) and (b) of the definition of “underlying thing” in section 2(1), the Authority may prescribe different arrangements, events, indices, intangible properties, tangible properties, transactions and classes of arrangements, events, indices, intangible properties, tangible properties or transactions for different purposes.”.

Amendment of First Schedule

93. The First Schedule to the principal Act is amended —

- (a) by deleting the word “or” at the end of paragraph (a)(i) of the definition of “clearing facility” in paragraph 4(1); and
- (b) by inserting, immediately after sub-paragraph (ii) of paragraph (a) of the definition of “clearing facility” in paragraph 4(1), the following sub-paragraph:

“(iii) derivatives contracts; or”.

Amendment of Fourth Schedule

94. The Fourth Schedule to the principal Act is amended —

- (a) by deleting items 4 and 5 and substituting the following items:

“4. Section 49(7)

5. Section 57(3)

5A. Section 75(3)

5B. Section 81SB(2)”;

- (b) by inserting, immediately after item 8, the following items:

“8A. Section 99B(2)

8B. Section 99I(1)”.

Savings and transitional provision

95. The Minister may, in relation to any provision of this Act, for a period of 2 years after the date of commencement of that provision, prescribe by regulations published in the *Gazette* such provisions of a savings or transitional nature consequent on the enactment of that provision as he considers necessary or expedient.

Consequential and related amendment to Companies Act

96. Section 145(6) of the Companies Act (Cap. 50) is amended by deleting “81A,” and substituting “46Z, 81P,”.

Consequential and related amendment to Monetary Authority of Singapore Act

97. Section 27A(6) of the Monetary Authority of Singapore Act (Cap. 186) is amended by deleting the words “designated clearing house” in paragraph (*h*) and substituting the words “licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house”.
