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The following Act was passed by Parliament on 5th October 2001 and assented to by the President on 17th October 2001:—

THE SECURITIES AND FUTURES ACT 2001

(No. 42 of 2001)

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REPUBLIC OF SINGAPORE

No. 42 of 2001.

I assent.



S R NATHAN,
President.
17th October 2001.

An Act relating to the regulation of activities and institutions in the securities and futures industry, including leveraged foreign exchange trading, and for matters connected therewith, to repeal the Futures Trading Act (Chapter 116 of the 1996 Revised Edition) and the Securities Industry Act (Chapter 289 of the 1985 Revised Edition) and also to make consequential amendments to certain other written laws.

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

PART I
PRELIMINARY

Short title and commencement

1. This Act may be cited as the Securities and Futures Act 2001 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

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

“accredited investor” means —

- (a) an individual whose net personal assets exceed \$5 million or its equivalent in value in foreign currencies;
or
- (b) a corporation with net assets exceeding \$10 million in value or its equivalent in value in foreign currencies as determined in accordance with the most recent audited balance-sheet of the corporation, or in the case of a corporation which is not required to prepare audited accounts, a balance-sheet certified by the corporation to give a true and fair view of the state of affairs of the corporation as at the end of the period to which it relates;

“advising on corporate finance” has the meaning given to it in the Second Schedule;

“advocate and solicitor” means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 130A of the Legal Profession Act (Cap. 161);

“auditor” means an approved company auditor as defined in section 4 (1) of the Companies Act (Cap. 50);

“Authority” means the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act (Cap. 186);

“book” includes any record, register, document or other record of information, and any account or accounting record,

however compiled, recorded or stored, whether in written or printed form or on microfilm or in any other electronic form or otherwise;

“business rules”, in relation to an exchange holding company, a securities exchange, a futures exchange, a recognised trading system provider or a 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 exchange holding company, securities exchange, futures exchange, recognised trading system provider or clearing house and its members; and

(b) other persons in relation to it,

whether or not those rules, regulations, by-laws or similar body of statements are made by the exchange holding company, securities exchange, futures exchange, recognised trading system provider or clearing house or are contained in its constituent documents, but does not include the listing rules of a securities exchange or recognised trading system provider (which is an overseas securities exchange);

“capital markets products” means any securities, futures contracts, contracts or arrangements for the purposes of foreign exchange trading, contracts or arrangements for the purposes of leveraged foreign exchange trading, and such other products as the Authority may prescribe as a capital markets products;

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

“clearing facility” means a facility for the clearing or settlement of securities or futures contracts traded on a securities market or a futures market;

“clearing house” means any corporation which has been approved by the Authority under section 51 as a clearing house;

“closed-end fund” means an arrangement referred to in paragraphs (a) and (b) of the definition of “collective

investment scheme” under which units that are exclusively or primarily non-redeemable units are issued;

“Code on Collective Investment Schemes” means the Code on Collective Investment Schemes referred to in section 284 which is issued by the Authority under section 321 (1);

“collective investment scheme” means —

- (a) an arrangement in respect of any property —
 - (i) under which —
 - (A) the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and
 - (B) the property is managed as a whole by or on behalf of a manager;
 - (ii) under which the contributions of the participants and the profits or income from which payments are to be made to them are pooled; and
 - (iii) the purpose or effect, or purported purpose or effect, of which is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —
 - (A) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or
 - (B) to receive sums paid out of such profits, income, or other payments or returns; or
- (b) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice published in the *Gazette*,

but does not include —

- (i) an arrangement operated by a person otherwise than by way of business;
- (ii) an arrangement under which each of the participants carries on a business other than investment business and enters into the arrangement solely incidental to that other business;
- (iii) an arrangement under which each of the participants is a related corporation of the manager;
- (iv) an arrangement under which each of the participants is a bona fide employee or former employee of a corporation in the same group of related corporations as the manager, or a spouse, widow, widower, minor child (natural or adopted) or minor step-child of such employee or former employee;
- (v) a franchise;
- (vi) an arrangement under which money received by an advocate and solicitor from his client, whether as a stakeholder or otherwise, acting in his professional capacity in the ordinary course of his practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions;
- (vii) an arrangement made by any co-operative society registered under the Co-operative Societies Act (Cap. 62) in accordance with the objects thereof for the benefit of its members;
- (viii) an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act (Cap. 39);
- (ix) an arrangement arising out of a life policy within the meaning of the Insurance Act (Cap. 142);
- (x) a closed-end fund constituted in Singapore;
- (xi) a closed-end fund constituted outside Singapore and listed on a securities exchange; or
- (xii) an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as not constituting a collective investment scheme by notice published in the *Gazette*;

“commodity”, in relation to a futures contract, means —

- (a) a financial instrument; or
- (b) gold, all classes of oil or such other item, good, article, service, right or interest, which is the subject of a futures contract, as the Authority may by order prescribe;

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

“connected person”, in relation to —

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

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

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

“customer” means —

- (a) for the purposes of Part V, a person on whose behalf a holder of a capital markets services licence carries on any regulated activity or any other person that the holder enters or will enter into transactions with as principal for the sale or purchase of securities or futures contracts, but does not include such person or class of persons as may be prescribed;

(b) for the purposes of any other provision in this Act, a person on whose behalf a holder of a capital markets services licence carries on any regulated activity;

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

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

(a) a cheque, letter of credit, order for the payment of money or bill of exchange; or

(b) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word “debenture” does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

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

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

“entity” includes, without limitation, the government of any state;

“exchange holding company” means any corporation which is a holding company of any securities exchange, futures exchange, clearing house or exchange holding company, and that is approved by the Authority under section 29;

“exempt clearing facility” means a clearing facility in relation to which, or a clearing facility included in a class of clearing facilities, being a class in relation to which, a declaration under section 50 (3) is in force;

“exempt market” means a securities market in relation to which, or a securities market included in a class of securities markets, being a class in relation to which, a declaration under section 5 (5) is in force or a futures market in relation

to which, or a futures market included in a class of futures markets, being a class in relation to which, a declaration under section 6 (5) is in force;

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

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

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

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

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

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

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

- (a) a party (referred to in this definition as the franchisor) to the agreement or arrangement (not being a collective investment scheme) authorises or permits another party (referred to in this definition as the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;
- (b) the business carried on by the franchisee or the person associated with the franchisee, as the case may be, is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;

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- (c) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee's business;
 - (d) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor; and
 - (e) the franchisor agrees to communicate to the franchisee, or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential;

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

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

- (a) one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at that time pursuant to terms and conditions set out in the business rules or practices of a futures exchange, recognised trading system provider or futures market; or
- (b) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the business rules or practices of a futures exchange, recognised trading system provider or futures market at which the contract is made,

and includes a futures option transaction;

“futures exchange” means a corporation that is approved by the Authority under section 9 as a futures exchange;

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

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

trading system provider or futures market on which the transaction is made;

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

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

“licensed person” means a corporation or an individual holding a licence granted under this Act;

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

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

whether those rules are made —

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

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

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- “member”, except for the purposes of sections 3 and 4 and Parts XI, XIII and XV, means a person who holds membership of any class or description of a securities exchange, futures exchange, recognised trading system provider or clearing house whether or not he holds any share in the share capital of the securities exchange, futures exchange, recognised trading system provider or clearing house;
- “newspaper” has the same meaning as in section 2 of the Newspaper and Printing Presses Act (Cap. 206);
- “officer” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);
- “overseas futures exchange” means a person operating a futures market outside Singapore which is regulated by a financial services regulatory authority of a country or territory other than Singapore;
- “overseas securities exchange” means a person operating a securities market outside Singapore which is regulated by a financial services regulatory authority of a country or territory other than Singapore;
- “participant” means a person who participates in a collective investment scheme by way of owning one or more units in a collective investment scheme;
- “prescribed written law” means this Act or any of the following written laws:
- (a) Banking Act (Cap. 19);
 - (b) Finance Companies Act (Cap. 108);
 - (c) Financial Advisers Act 2001;
 - (d) Insurance Act (Cap. 142);
 - (e) Monetary Authority of Singapore Act (Cap. 186);
 - (f) Money-changing and Remittance Businesses Act (Cap. 187); or
 - (g) such other written law as the Authority may by order prescribe;
- “principal” means a person whom a representative is in the direct employment of, acting for or by arrangement with, and for whom the representative carries out any regulated activity;

- “providing custodial services for securities” has the meaning given to it in the Second Schedule;
- “public company” has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);
- “quote”, in relation to securities and a securities market of a securities exchange or recognised trading system provider, means to display or provide, on the securities market of the securities exchange or recognised trading system provider, information concerning the particular prices or particular consideration at which offers or invitations to sell, purchase or exchange issued securities are made on that securities market, being offers or invitations that are intended or may reasonably be expected, to result, directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange issued securities;
- “record” means information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;
- “recognised trading system provider” means a person who is recognised by the Authority under section 36 as a recognised trading system provider;
- “regulated activity” means an activity specified in the Second Schedule;
- “related corporation” has the same meaning as in section 4 (1) of the Companies Act;
- “representative”, except for the purposes of Part XIII, means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such activity (other than work ordinarily performed by accountants, clerks or cashiers), whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise; and includes any officer of a corporation who performs for the corporation any such activity whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“securities” means —

- (a) debentures or stocks issued or proposed to be issued by a government;
- (b) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporate;
- (c) any right, option or derivative in respect of any such debentures, stocks or shares;
- (d) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in —
 - (i) the value or price of any such debentures, stocks or shares;
 - (ii) the value or price of any group of any such debentures, stocks or shares; or
 - (iii) an index of any such debentures, stocks or shares; or
- (e) any unit in a collective investment scheme,

but does not include —

- (i) futures contracts;
- (ii) bills of exchange;
- (iii) promissory notes; or
- (iv) certificates of deposit issued by a bank or finance company whether situated in Singapore or outside Singapore;

“securities exchange” means a corporation that is approved by the Authority under section 9 as a securities exchange;

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

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

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

“share” means a share in the share capital of a corporation and includes stock except where a distinction between stock and shares is express or implied;

“substantial shareholder” has the same meaning as in Division 4 of Part IV of the Companies Act (Cap. 50);

“substantial shareholding” has the same meaning as in Division 4 of Part IV of the Companies Act;

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

“take-over offer” means —

(a) an offer for the acquisition by or on behalf of a person of —

(i) some or all of the shares in a public company or some or all of the shares of a particular class in a public company, made to all members of the company, or where the person already holds shares in the company, made to all other members of the company; or

(ii) all of the remaining shares in a public company made to all other members of the company as a result of the person acquiring or consolidating effective control of that company within the meaning of the Take-over Code; or

(b) a proposed compromise or arrangement referred to in section 210 of the Companies Act that if executed would result in a change in effective control of the public company concerned within the meaning of the Take-over Code;

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

“unit”, in relation to a collective investment scheme, means a right or interest (however described) of a participant in a collective investment scheme (whether or not constituted as a corporation);

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

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

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- (a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owned jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;
 - (b) in the case of a corporation (not being a trustee corporation) that is a trustee (but without limiting the generality of paragraph (a)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;
 - (c) the internal management and proceeding of the corporation;
 - (d) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —
 - (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;
 - (ii) the corporation is under judicial management;
 - (iii) a compromise or arrangement referred to in section 210 of the Companies Act (Cap. 50) made between the corporation and another person or other persons is being administered; or
 - (iv) the corporation is being wound up,and without limiting the generality of sub-paragraphs (i) to (iv), any conduct of such a receiver or such a receiver and manager, or such a judicial manager, or any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;
 - (e) the ownership of shares in, debentures of, units of shares in, units of debentures of, and units in a collective investment scheme issued by the corporation;

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

(3) Where the name of a corporation referred to in this Act is changed pursuant to the Companies Act (Cap. 50), the change of name shall not affect the identity of that corporation or the application of the relevant provisions of this Act or any other written law to that corporation.

Associated person

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

- (a) where the other person is a corporation —
 - (i) a director or secretary of the corporation;
 - (ii) a related corporation; or
 - (iii) a director or secretary of such a related corporation;
- (b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the

voting power attached to voting shares in a corporation, a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied —

- (i) by reason of which either of those persons may exercise, directly or indirectly, control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the corporation;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation; or
 - (iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of such shares in accordance with the directions of the other of them, except that, in relation to a matter relating to shares in a corporation, a person may be an associate of the corporation and the corporation may be an associate of a person;
- (c) a person in concert with whom the other person is acting, or proposes to act, in relation to the matter to which the reference relates;
- (d) where the matter to which the reference relates is a matter, other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation —
- (i) subject to subsection (2), a person who is a director of a corporation of which the other person is a director; or
 - (ii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- (e) a person with whom the other person is to be regarded, according to any subsidiary legislation made under this Act, as associated in respect of the matter to which the reference relates;

- (f) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (g) where the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as referred to in paragraphs (a) to (f), that last-mentioned person.

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

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

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

Interest in securities

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

(2) For the purposes of subsection (1), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular securities is, or is capable of being made, subject to restraint or restriction.

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

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

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

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

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

(a) a person is;

(b) the associates of a person are; or

(c) a person and his associates are,

entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the corporation, that person shall be deemed to have an interest in that security.

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

(a) a related corporation of that other person;

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

- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security;
 - (d) a corporation which is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the second-mentioned person in relation to that security; or
 - (e) a corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the second-mentioned person is accustomed or under an obligation, whether formal or informal, to act in relation to that security.
- (7) A person shall be deemed to have an interest in a security in any one or more of the following circumstances:
- (a) where he has entered into a contract to purchase a security;
 - (b) where he has a right, otherwise than by reason of having an interest under a trust, to have a security transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
 - (c) where he has the right to acquire a security or an interest in a security, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
 - (d) where he is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to a security, not being a security of which he is the registered holder.
- (8) A person shall be deemed to have an interest in a security if that security is held jointly with another person.
- (9) For the purpose of determining whether a person has an interest in a security, it is immaterial that the interest cannot be related to a particular security.

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- (10) There shall be disregarded —
- (a) an interest in a security if the interest is that of a person who holds the security as bare trustee;
 - (b) an interest in a security if the interest is that of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
 - (c) an interest of a person in a security if that interest is an interest held by him by reason of his holding a prescribed office;
 - (d) an interest of a company in its own securities if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G of the Companies Act (Cap. 50); and
 - (e) a prescribed interest in a security being an interest of such person, or of the persons included in such class of persons, as may be prescribed.
- (11) An interest in a security shall not be disregarded by reason only of —
- (a) its remoteness;
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction.

PART II

MARKETS

Division 1 — Securities Markets and Futures Markets

Establishment of securities market

5.—(1) Subject to subsections (3) and (5), no person shall establish or operate or assist in establishing or operating or hold himself out as operating a securities market unless the person is —

- (a) approved as a securities exchange under section 9 (4); or
- (b) recognised as a recognised trading system provider under section 36 (4).

(2) A holder of a capital markets services licence or an exempt person which intends to carry on any activity referred to in subsection (1) may apply in writing to the Authority for exemption from subsection (1) to carry on the activities referred to in that subsection.

(3) The Authority may grant such exemption subject to such conditions or restrictions as the Authority may think fit to impose if —

- (a) in the opinion of the Authority, the carrying on of the activities referred to in subsection (1) is not the predominant business (as may be prescribed) of the holder or the exempt person; and
- (b) one of the regulated activities to which the holder's licence relates or which is carried on by the exempt person is dealing in securities.

(4) The Authority may prescribe the criteria or factors which it may consider in determining whether the carrying on of any activity is the predominant business of the holder of the capital markets services licence or the exempt person.

(5) The Authority may declare any securities market or class of securities markets to be exempt from the prohibition under subsection (1) subject to such conditions or restrictions as the Authority may think fit to impose.

(6) The Authority may revoke any exemption granted to a person under subsection (3) or (5) if —

- (a) the person ceases to operate its securities market;
- (b) the person is being wound up or otherwise dissolved whether in Singapore or elsewhere;
- (c) the person is contravening or is likely to contravene or has contravened any condition or restriction of its exemption or that is applicable to it under this Act;
- (d) the person is contravening or is likely to contravene or has contravened any direction issued to it by the Authority; or
- (e) the person is operating in a manner that is, in the opinion of the Authority, contrary to the public interest.

(7) For the purposes of subsection 6 (a), a person shall be deemed to have ceased to operate its securities market if it has ceased to

operate the securities market for more than 30 days unless it has obtained the prior approval of the Authority to do so.

(8) Subject to subsection (9), the Authority shall not revoke any exemption granted to a person under subsection (3) or (5) without giving the person an opportunity to be heard.

(9) Where the Authority revokes an exemption granted to a person under subsection (3) or (5) on any ground referred to in subsection (6) on the basis of any of the following circumstances:

- (a) the person or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the person or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, judicial manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person or its substantial shareholder;
- (d) the person or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (e) the person or its substantial shareholder, or any officer of the person has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly,

the Authority need not give the person an opportunity to be heard.

(10) A person that is aggrieved by the decision of the Authority made under subsection (6) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(11) Notwithstanding the lodging of an appeal under subsection (10), any action taken by the Authority under this section shall continue to have effect pending the determination or withdrawal of the appeal.

(12) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

(13) Any revocation of exemption referred to in subsection (6) shall not operate so as to —

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

(14) A person who is granted an exemption under subsection (3) shall continue to satisfy the requirements specified in that subsection.

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

(16) Any person who contravenes any of the conditions or restrictions imposed under subsection (3) or (5) or contravenes subsection (14) 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.

Establishment of futures market

6.—(1) Subject to subsections (3) and (5), no person shall establish or operate or assist in establishing or operating or hold himself out as operating a futures market unless the person is —

- (a) approved as a futures exchange under section 9 (4); or
- (b) recognised as a recognised trading system provider under section 36 (4).

(2) A holder of a capital markets services licence or an exempt person which intends to carry on any activity referred to in subsection (1) may apply in writing to the Authority for exemption from subsection (1) to carry on the activities referred to in that subsection.

(3) The Authority may grant such exemption referred to in subsection (2) subject to such conditions or restrictions as the Authority may think fit to impose if —

- (a) in the opinion of the Authority, the carrying on of the activities referred to in subsection (1) is not the predominant business (as may be prescribed) of the holder or the exempt person; and
- (b) one of the regulated activities to which the holder's licence relates or which is carried on by the exempt person is trading in futures contracts.

(4) The Authority may prescribe the criteria or factors which it may consider in determining whether the carrying on of any activity is the predominant business of the holder of a capital markets services licence or an exempt person.

(5) The Authority may declare any futures market or class of futures markets to be exempt from the prohibition under subsection (1) subject to such conditions or restrictions as the Authority may think fit to impose.

(6) The Authority may revoke any exemption granted under subsection (3) or (5) if —

- (a) the person ceases to operate its futures market;
- (b) the person is being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (c) the person is contravening or is likely to contravene or has contravened any condition or restriction of its approval or that is applicable to it under this Act;
- (d) the person is contravening or is likely to contravene or has contravened any direction issued to it by the Authority;
- (e) the person is operating in a manner that is, in the opinion of the Authority, contrary to the public interest.

(7) For the purposes of subsection (6) (a), a person shall be deemed to have ceased to operate its futures market if it has ceased to operate the futures market for more than 30 days unless it has obtained the prior approval of the Authority to do so.

(8) Subject to subsection (9), the Authority shall not revoke any exemption granted to a person under subsection (3) or (5) without giving the person an opportunity to be heard.

(9) Where the Authority revokes an exemption granted to a person under subsection (3) or (5) on any ground referred to in subsection (6) on the basis of any of the following circumstances:

- (a) the person or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the person or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, judicial manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person or its substantial shareholder;
- (d) the person or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (e) the person or its substantial shareholder, or any officer of the person has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly,

the Authority need not give the person an opportunity to be heard.

(10) A person that is aggrieved by the decision of the Authority made under subsection (6) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(11) Notwithstanding the lodging of an appeal under subsection (10), any action taken by the Authority under this section shall continue to have effect pending the determination or withdrawal of the appeal.

(12) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

(13) Any revocation of exemption referred to in subsection (6) shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into on the futures market operated by the person,

whether the agreement, transaction or arrangement was entered into before or after the revocation of the exemption; or

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

(14) A person who is granted an exemption under subsection (3) shall continue to satisfy such conditions or restrictions as are specified in that subsection.

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

(16) Any person who contravenes any of the conditions or restrictions imposed under subsection (3) or (5) or contravenes subsection (14) 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.

Power of Authority to make regulations

7.—(1) Without prejudice to section 341, the Authority may make regulations relating to the approval or recognition of and the requirements applicable to persons who establish or operate securities markets or futures markets.

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

- (a) the approval of a corporation as a securities exchange or futures exchange;
- (b) the recognition of an overseas securities exchange, an overseas futures exchange or a corporation as a recognised trading system provider;
- (c) the requirements applicable to a securities exchange, futures exchange, recognised trading system provider, person granted an exemption under section 5 (3) or 6 (3) or person operating an exempt market.

(3) Without prejudice to the generality of subsection (1), regulations made under this section may prescribe requirements that apply to recognised trading system providers which would also apply to a person granted an exemption under section 5 (3) or 6 (3).

(4) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$200,000.

Application of provisions to person granted an exemption under section 5 (3) or 6 (3) or person operating an exempt market

8. The Authority may, if it thinks fit, apply any of the provisions in Divisions 2 and 4, with the necessary modifications, to any person who is granted an exemption under section 5 (3) or 6 (3) or person operating an exempt market.

Division 2 — Exchanges

Power of Authority to approve securities exchange or futures exchange

9.—(1) A corporation may apply to the Authority for approval to be a securities exchange or futures exchange in such form and manner as the Authority may prescribe.

(2) The application shall be accompanied by the prescribed fee.

(3) The Authority may require a corporation to provide the Authority with such further information as it considers necessary in relation to the application, in such form or verified in such manner as the Authority may direct.

(4) The Authority may, in writing, subject to such conditions or restrictions as it may think fit to impose, approve a corporation as a securities exchange or futures exchange if the Authority is satisfied that —

- (a) the corporation will ensure that, as far as is reasonably practicable —
 - (i) in the case of a securities exchange, that it will operate an orderly, informed and fair securities market; or
 - (ii) in the case of a futures exchange, that it will operate an orderly, informed and fair futures market;

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- (b) the corporation will manage any risks associated with its business and operations prudently;
 - (c) the corporation, in discharging its obligations under paragraph (a), will not act contrary to the interests of the public, having particular regard to the interests of the investing public;
 - (d) the corporation will enforce compliance by its members with its business rules and, where appropriate, its listing rules;
 - (e) the business rules and, where appropriate, listing rules of the corporation make satisfactory provision for —
 - (i) an orderly, informed and fair market in securities or futures contracts that are traded through its facilities; and
 - (ii) the proper regulation and supervision of its members;
 - (f) the corporation has sufficient financial, human and system resources to —
 - (i) establish and operate a fair and efficient securities market or futures market;
 - (ii) meet contingencies or disasters; and
 - (iii) provide adequate security arrangements; and
 - (g) it would not be contrary to the interests of the investing public to approve the application.
- (5) For the purposes of subsection (4) (f), “contingencies or disasters” includes events such as technical complications occurring within automated systems.
- (6) The Authority may impose different conditions or restrictions or give different directions with respect to different applications for approval to be a securities exchange or futures exchange.
- (7) An applicant that is aggrieved by the refusal of the Authority to grant an approval under subsection (4) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.
- (8) The Authority shall give notice in the *Gazette* of any securities exchange or futures exchange that has been approved under this section.

(9) A securities exchange or futures exchange which contravenes any of the conditions or restrictions specified under subsection (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.

Business rules of securities exchange and futures exchange and listing rules of securities exchange

10. Without limiting the generality of section 9, the business rules of a securities exchange or futures exchange or, where appropriate, the listing rules of a securities exchange, shall make provision to the satisfaction of the Authority —

- (a) for the exclusion from membership of persons who are not of good character and high business integrity;
- (b) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules of the proposed securities exchange or futures exchange;
- (c) with respect to the terms and conditions under which securities may be listed for quotation or quoted on the securities market of the proposed securities exchange, or under which futures contracts may be listed for trading on the futures market of the proposed futures exchange;
- (d) with respect to the class or classes of securities that may be dealt in or futures contracts that may be traded by members and the terms and conditions governing dealing in securities or trading in futures contracts by members;
- (e) with respect to fair and properly supervised floor trading practices;
- (f) with respect to measures to prevent manipulation, market rigging and artificial market conditions in its securities market or futures market;
- (g) with respect to the recording and publishing of details of trading;

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- (h) with respect to the clearing and other arrangements made, and the financial condition of —
- (i) the proposed securities exchange or futures exchange;
 - (ii) the clearing house of the proposed securities exchange or futures exchange; and
 - (iii) the members of the proposed securities exchange or futures exchange,
- such as to provide reasonable assurance that all obligations arising out of the dealing in securities or trading in futures contracts on the securities market of that proposed securities exchange or futures market of that proposed futures exchange will be met;
- (i) with respect to the establishment of any compensation arrangement, or any other scheme or system accepted by the Authority, which would compensate customers who suffer pecuniary loss through the defalcation of a member, or any of its directors, officers, employees or representatives, in respect of any money or other property that was entrusted to or received by a member, or any of its directors, officers, employees or representatives, for or on behalf of any person or by reason that the member was a trustee of the money or other property; and
- (j) generally for carrying on the business of the proposed securities exchange or futures exchange with due regard to the interests and protection of the investing public.

Continuing obligations of securities exchange and futures exchange

11.—(1) A securities exchange or futures exchange shall continue to satisfy such conditions or restrictions as are required for the corporation to be approved as a securities exchange or futures exchange, and in particular, the requirements specified in sections 9 (4) and 10 and any regulations made under section 7.

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

Revocation of approval

12.—(1) The Authority may in writing revoke any approval granted under section 9 to a corporation if —

- (a) the corporation ceases to operate its securities market or futures market;
- (b) the corporation is being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (c) the corporation is contravening or is likely to contravene or has contravened any condition or restriction of its approval or that is applicable to it under this Act;
- (d) the corporation is contravening or is likely to contravene or has contravened any direction issued to it by the Authority;
- (e) the corporation is operating in a manner that is, in the opinion of the Authority, contrary to the public interest;
- (f) any information provided to the Authority under section 9 or 14 was false or misleading in a material particular; or
- (g) the Authority deems fit upon the application of the corporation to cancel the approval.

(2) For the purposes of subsection (1) (a), a corporation shall be deemed to have ceased to operate its securities market or futures market if it has ceased to operate its securities market or futures market for more than 30 days unless it has obtained the prior approval of the Authority to do so, or it has ceased to operate such securities market or futures market by virtue of a direction issued by the Authority under section 21, 23 or 24.

(3) Subject to subsection (4), the Authority shall not revoke any approval granted to a corporation under section 9 without giving the corporation an opportunity to be heard.

(4) Where the Authority revokes an approval granted to a corporation under section 9 on any ground referred to in subsection (1) on the basis of any of the following circumstances:

- (a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;

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- (c) a receiver, a receiver and manager, judicial manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation or its substantial shareholder;
 - (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
 - (e) the corporation or its substantial shareholder, or any officer of the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly,

the Authority need not give the corporation an opportunity to be heard.

(5) A corporation that is aggrieved by the decision of the Authority made under subsection (1) may, within 30 days after it 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 determination or withdrawal of the appeal.

(7) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

Effect of revocation

13. Any revocation of approval referred to in section 12 shall not operate so as to —

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

Exchanges to assist Authority

14.—(1) A securities exchange or futures exchange shall provide such assistance to the Authority as the Authority may reasonably require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of such books and other information relating to the business of the securities exchange or futures exchange or in respect of any dealing in securities or trading in futures contracts or any other specified information as the Authority may require for the proper administration of this Act.

(2) A securities exchange or futures exchange shall immediately notify the Authority if it becomes aware of a financial irregularity or other matter which in the opinion of the securities exchange or futures exchange may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet its legal obligations.

(3) A securities exchange or futures exchange which, without reasonable justification or excuse, contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Control of substantial shareholding in securities exchange or futures exchange

15.—(1) No person shall enter into any agreement to acquire shares by virtue of which he would, if the agreement is carried out, acquire a substantial shareholding in a securities exchange or futures exchange without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to his entering into the agreement.

(2) The Authority may grant its approval referred to in subsection (1) subject to such conditions or restrictions as the Authority may think fit.

(3) Without prejudice to subsection (5), the Authority may, for the purposes of securing compliance with subsection (1) or any condition or restriction imposed under subsection (2), by notice in writing direct the transfer or disposal of all or any of the shares of the securities

exchange or futures exchange in which the substantial shareholder has or has had an interest.

(4) Any person who receives a notice by the Authority under subsection (3) shall transfer or dispose of the number of shares of the securities exchange or futures exchange which are the subject of such direction, and until such transfer or disposal —

- (a) no voting rights shall be exercisable in respect of that number of shares;
- (b) no shares of the securities exchange or futures exchange shall be issued or offered (whether by way of rights, bonus or otherwise) in respect of that number of shares; and
- (c) no payment shall be made by the securities exchange or futures exchange of any sums (whether by way of dividends or otherwise) in respect of that number of shares, except in a liquidation of the securities exchange or futures exchange.

(5) Any person who contravenes subsection (1) or (4) or any condition or restriction imposed by the Authority under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

Business rules of securities exchange or futures exchange have effect as contract

16. The business rules of a securities exchange or futures exchange shall operate as a binding contract —

- (a) between the securities exchange or futures exchange and each member; and
- (b) between a member and any other member,

under which each of the persons mentioned in paragraphs (a) and (b) agrees to observe and perform the provisions of the business rules as are in force for the time being, so far as those provisions are applicable to that person.

Authority to be notified of amendments to business rules or listing rules

17.—(1) A securities exchange or futures exchange that proposes to make any amendment by way of rescission, substitution, alteration or addition to its business rules, or a securities exchange that proposes to make any amendment by way of rescission, substitution, alteration or addition to its listing rules shall immediately inform the Authority of the proposed amendment by written notice which shall state the date on which the amendment is proposed to be made, an explanation of the purpose of the amendment and the text of the amendment.

(2) If the notice required to be given under subsection (1) is not given at least 21 days before the making of the amendment, that amendment shall not come into force.

(3) The Authority may, within 21 days after the receipt of a notice under subsection (1), by notice in writing to the securities exchange or futures exchange, disallow, alter or supplement the whole or any specified part of the amendment in question and, thereupon, such whole or specified part of the amendment, as the case may be —

- (a) where it is disallowed, shall not come into force; or
- (b) where it is altered or supplemented, shall come into force accordingly.

(4) The Authority may, in its discretion, by notice in writing to the securities exchange or futures exchange, extend the period specified in subsection (3), and where the period is extended, the amendment shall not come into force before the expiry of the extended period.

(5) In addition to the power conferred upon the Authority under subsection (3), the Authority may of its own motion, by notice in writing to a securities exchange or futures exchange, alter or supplement the business rules of the securities exchange or futures exchange, or the listing rules of the securities exchange, or alter or supplement the terms and conditions on which securities or futures contracts are traded on the securities exchange or futures exchange, if it considers that such action is necessary for the protection of investors or to ensure fair dealing in a securities market or futures market.

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

18.—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a securities exchange or futures exchange, or the listing rules of a securities exchange, fails to comply with, observe, enforce or give effect to any of those business rules or listing rules, the High Court may, on the application of the Authority, a securities exchange, a futures exchange or a person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity to be heard, make an order directing that person to comply with, observe, enforce or give effect to those business rules or listing rules.

(2) Subsection (1) shall apply to a person being —

- (a) a corporation that has been admitted to the official list of a securities exchange and has not been removed from that official list; or
- (b) a person associated with a corporation that has been admitted to the official list of a securities exchange and has not been removed from that official list,

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

(3) For the purposes of this section, “person” includes a securities exchange and a futures exchange.

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

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

19. Any failure by a securities exchange or futures exchange to comply with this Act or its business rules or, where appropriate, its listing rules in relation to a matter shall not prevent the matter from being treated for the purposes of this Act as done in accordance with the business rules or listing rules so long as the failure does not substantially affect the rights of a person entitled to require compliance with the business rules or listing rules.

Review of disciplinary action taken by securities exchange or futures exchange

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

(2) The Authority may, on its own motion or on application by an aggrieved person review any disciplinary action taken by a securities exchange or futures exchange under subsection (1) and may affirm, modify or set aside the decision of the securities exchange or futures exchange after giving the member and the securities exchange or futures exchange an opportunity to be heard.

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

(4) Any person who is aggrieved by the decision of a securities exchange or futures exchange or the Authority under this section may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

Power of Authority to issue directions to securities exchange or futures exchange

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

- (a) for ensuring fair and orderly securities markets or futures markets;
- (b) for ensuring the integrity of, and proper management of systemic risks in, securities markets or futures markets; or
- (c) in the interest of the public or section of the public or for the protection of investors,

issue directions by notice in writing either of a general or specific nature to a securities exchange or futures exchange.

(2) Without prejudice to the generality of subsection (1), any direction issued under that subsection may relate to —

- (a) the trading or the termination of trading on or through the facilities of that securities exchange or futures exchange or with respect to any securities listed for quotation or quoted on that securities exchange, or futures contracts listed for trading on that futures exchange;
- (b) the manner in which a securities exchange or futures exchange carries on its business, including the manner of reporting off-market purchases; or
- (c) any other matter which the Authority considers necessary for the proper administration of this Act,

and the securities exchange or futures exchange shall comply with any such direction.

(3) A securities exchange or futures exchange which, without reasonable justification or excuse, contravenes a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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.

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

Removal of officer of securities exchange or futures exchange

22.—(1) Where the Authority is satisfied that an officer of a securities exchange or futures exchange —

- (a) has wilfully contravened or wilfully caused that securities exchange or futures exchange to contravene this Act or the business rules or, where applicable, listing rules of that securities exchange or futures exchange;
- (b) has, without reasonable justification or excuse, failed to enforce compliance with this Act or the business rules or listing rules, where applicable, of that securities exchange or futures exchange, by that securities exchange or futures exchange or a member of that securities exchange or futures exchange or a person associated with that member;
- (c) has failed to discharge the duties or functions of his office;

- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interest of the public, or section of the public or for the protection of investors, direct by notice in writing that securities exchange or futures exchange to remove the officer from office or employment and that securities exchange or futures exchange shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of a securities exchange or futures exchange has failed to discharge the duties or functions of his office for the purposes of subsection (1) (c), have regard to such criteria as may be prescribed or as may be specified in written directions.

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

(4) Where the Authority directs a securities exchange or futures exchange to remove an officer from office or employment under this section on any ground referred to in subsection (1) (d), (e), (f) or (g) the Authority need not give that securities exchange or futures exchange an opportunity to be heard.

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

(6) A securities exchange or futures exchange that is aggrieved by the direction of the Authority to remove an officer from office or employment under subsection (1) may, within 30 days after it is notified of the direction, appeal to the Minister whose decision shall be final.

(7) A securities exchange or futures exchange which, without reasonable justification or excuse, contravenes a written notice issued to it 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.

Power of Authority in securities market

23.—(1) Without prejudice to the generality of section 21, where the Authority is of the opinion that it is necessary to prohibit trading in particular securities of, or made available by, a corporation on the securities market of a securities exchange in order to protect persons buying or selling the securities or in the interests of the public, the Authority may give notice in writing to the securities exchange stating that it is of that opinion and setting out the reasons for its opinion.

(2) If, after the receipt of the notice given under subsection (1), the securities exchange fails to take any action in relation to those securities on that securities market and the Authority continues to be of the opinion that it is necessary to prohibit trading in those securities on that securities market, the Authority may, by notice in writing to the securities exchange, prohibit trading in those securities on that securities market for such period, not exceeding 14 days, as is specified in the notice.

(3) Where the Authority gives a notice to a securities exchange under subsection (2) in relation to trading in particular securities of, or made available by, a corporation or other entity, the Authority shall —

- (a) at the same time send a copy of the notice to the corporation or other entity together with a statement setting out the reasons for the giving of the notice; and
- (b) as soon as practicable furnish to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the securities exchange.

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

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

(6) A securities exchange which permits trading in securities on the securities market of the securities exchange in contravention of a notice given under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Emergency powers of Authority

24.—(1) Where the Authority has reason to believe that an emergency exists, or where the Authority thinks it necessary or expedient in the interest of the public or section of the public or for the protection of investors, the Authority may direct by notice in writing a securities exchange or futures exchange to take such action as it considers necessary to maintain or restore orderly trading in securities or futures contracts or any class of securities or futures contracts or liquidation of any position in respect of any securities or futures contract or any class of securities or futures contracts, including but not limited to —

- (a) terminating or suspending trading on a securities exchange or futures exchange;
- (b) confining trading to liquidation of securities or futures contracts positions;
- (c) ordering the liquidation of all positions or part thereof or the reduction in such positions;
- (d) limiting trading to a specific price range;
- (e) modifying trading days or hours;
- (f) altering conditions of delivery;

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- (g) fixing the settlement price at which positions are to be liquidated;
 - (h) requiring any person to act in a specified manner in relation to trading in securities or futures contracts or any class of securities or futures contracts;
 - (i) requiring margins or additional margins for any securities or futures contracts; and
 - (j) modifying or suspending any of the business rules of a securities exchange or futures exchange,

and the securities exchange or futures exchange, as the case may be, shall comply with that direction.

(2) Where a securities exchange or futures exchange fails to comply with the direction of the Authority under subsection (1), within such time as is specified by the Authority, the Authority may —

- (a) set emergency margin levels in any securities or futures contract or class of securities or futures contracts;
- (b) set limits that may apply to market positions acquired in good faith prior to the date of the Authority's action; or
- (c) take such other action as the Authority thinks fit to maintain or restore orderly trading in any securities or futures contracts or class of securities or futures contracts, or liquidation of any position in respect of securities or futures contract or class of securities or futures contracts.

(3) In this section, “emergency” means threatened or actual market manipulations and corners, and includes —

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

(4) Without prejudice to subsection (1), where a securities exchange or futures exchange takes emergency action under subsection (1), the Authority may modify such emergency action, including but not limited to the setting aside of that emergency action.

(5) Any person who is aggrieved by any action taken by the Authority, a securities exchange or a futures exchange under this section may, within 30 days after it 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 emergency action taken by the Authority, a securities exchange or a futures exchange under this section shall continue to have effect pending the determination or withdrawal of the appeal.

(7) The Minister may make such modification to any emergency action, taken by the Authority, a securities exchange or a futures exchange, that is the subject of an appeal and such modified emergency action shall have effect.

Power of Authority to approve futures contracts

25.—(1) No futures exchange shall list or de-list any futures contract on its exchange or permit the trading of any futures contract on the futures market established or operated by the futures exchange without the prior approval of the Authority.

(2) The Authority may grant approval for the listing or de-listing of a futures contract on a futures exchange or for the trading of any futures contract on the futures market established or operated by the futures exchange subject to such conditions or restrictions as the Authority may think fit.

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

(4) A futures exchange which contravenes any of the conditions or restrictions imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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.

Fixing of position and trading limits in futures contracts

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

contract, the Authority or a futures exchange with the approval of the Authority may, by notice in writing from time to time, establish and fix such limits as it considers necessary on the amount of trading which may be done or positions which may be held by any person, generally or specifically, under a futures contract traded on the futures market of or subject to the business rules of a futures exchange.

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

(3) Such limits upon positions and trading shall apply to positions held by, and trading done by, 2 or more persons acting pursuant to an express or implied agreement or understanding, as if the positions were held by, or the trading done by, a single person.

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

(5) No person shall, directly or indirectly —

(a) buy or sell or agree to buy or sell, under a futures contract traded on the futures market of or subject to the business rules of a futures exchange, any amount of a commodity in excess of the trading limits fixed for one business day, or other stated period set by the Authority or a futures exchange; or

(b) hold or control a net buy or sell position under a futures contract traded on the futures market of or subject to the business rules of a futures exchange in excess of any position limit fixed by the Authority or the futures exchange.

(6) Nothing in this section shall preclude the Authority or a futures exchange with the approval of the Authority from fixing different trading or position limits for different futures contracts or delivery months or for different days remaining until the last day of trading in a futures contract or different trading limits for the purposes of subsection (5), or from exempting transactions under this section.

Additional powers of Authority in respect of auditors

27.—(1) If an auditor, in the course of the performance of his duties as an auditor of a securities exchange or futures exchange, becomes aware —

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

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

(2) An auditor shall not, in the absence of malice on his 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 has, apart from this section, as a defendant in an action for defamation.

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

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

and the auditor shall carry out such duties.

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

(6) For the avoidance of doubt, sections 207 and 208 of the Companies Act (Cap. 50) shall, to the extent to which they may be applicable, apply to the discharge of an auditor's duties under subsection (4).

Division 3 — Exchange Holding Companies

Exchange holding company

28. No corporation shall be the holding company of any securities exchange, futures exchange or clearing house or of any corporation that is an exchange holding company unless the corporation has been approved as an exchange holding company under section 29.

Power of Authority to approve exchange holding company

29.—(1) A corporation may apply to the Authority for approval to be an exchange holding company in such form and manner as the Authority may prescribe.

(2) The application shall be accompanied by the prescribed fee.

(3) The Authority may require a corporation to provide the Authority with such further information as it considers necessary in relation to the application in such form or verified in such manner as the Authority may direct.

(4) The Authority may, by notice in writing, subject to such conditions or restrictions as it may think fit to impose, approve a corporation as an exchange holding company if the Authority is satisfied that it would not be contrary to the interests of the investing public to approve the application.

(5) The Authority may impose different conditions or restrictions or give different directions with respect to different applications for approval as an exchange holding company.

(6) An applicant that is aggrieved by the refusal of the Authority to grant an approval under subsection (4) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(7) An exchange holding company which contravenes any of the conditions or restrictions imposed under subsection (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.

Revocation of approval

30.—(1) The Authority may, in writing, revoke any approval granted under section 29 if —

- (a) the corporation is being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) the corporation is contravening or is likely to contravene or has contravened any condition or restriction of its approval that is applicable to it under this Act;
- (c) the corporation is contravening or is likely to contravene or has contravened any direction issued to it by the Authority;
- (d) the corporation is operating in a manner that is, in the opinion of the Authority, contrary to the public interest;
- (e) any information provided to the Authority under section 29 (3) was false or misleading in a material particular; or
- (f) the Authority deems fit upon the application of the corporation to cancel the approval.

(2) Subject to subsection (3), the Authority shall not revoke any approval granted to a corporation under section 29 without giving the corporation an opportunity to be heard.

(3) Where the Authority revokes an approval granted to a corporation under section 29 on any ground referred to in subsection (1) on the basis of any of the following circumstances:

- (a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, judicial manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation or its substantial shareholder;

- (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (e) the corporation or its substantial shareholder, or any officer of the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly,

the Authority need not give the corporation an opportunity to be heard.

(4) A corporation that is aggrieved by the decision of the Authority made under subsection (1) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

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

(6) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

Listing of exchange holding company on securities exchange

31.—(1) The securities of an exchange holding company may be listed for quotation on a securities exchange if the exchange holding company has entered into such arrangements as the Authority may require —

- (a) for dealing with possible conflicts of interest that may arise from the listing for quotation on a securities exchange of securities of the exchange holding company; and
- (b) for the purpose of ensuring the integrity of trading of the securities of the exchange holding company,

and the exchange holding company shall comply with such requirements.

(2) The listing rules of the securities exchange shall be deemed to allow the Authority, instead of the securities exchange, to make decisions and to take action (or require the securities exchange to make decisions and to take action on the Authority's behalf) on —

- (a) the admission to or removal from the securities exchange's official list of the exchange holding company; and
 - (b) granting, stopping or suspending the securities of the exchange holding company from being listed for quotation or quoted on the securities exchange.
- (3) The Authority may, by notice in writing —
- (a) modify the listing rules of the securities exchange for the purpose of applying to the listing for quotation or trading of the securities of the exchange holding company; and
 - (b) exempt the exchange holding company from any listing rule of the securities exchange.

Power of Authority to issue directions to exchange holding company

- 32.**—(1) The Authority may, if it thinks it necessary or expedient —
- (a) for ensuring the fair and orderly conduct of securities markets or futures markets;
 - (b) for ensuring the integrity of, and proper management of systemic risks in, securities markets or futures markets; or
 - (c) in the interest of the public or section of the public or for the protection of investors,

issue directions by notice in writing either of a general or specific nature to an exchange holding company.

- (2) Without prejudice to the generality of subsection (1), any direction issued under that subsection may relate to —
- (a) the requirement for the prior approval of the Authority in respect of any proposed amendment, whether by way of alteration or addition, to the business rules of the exchange holding company;
 - (b) the corporate governance of the exchange holding company;
 - (c) the inspection by the Authority or by any person appointed by the Authority of the books and affairs of the exchange holding company;
 - (d) the management by the exchange holding company of any of its subsidiaries that carries on the business of a securities exchange, futures exchange or clearing house, whether such business forms the whole or part of such subsidiary's undertaking; and

(e) any other matter which the Authority considers necessary for the effective administration of this Act,

and the exchange holding company shall comply with any such direction.

(3) An exchange holding company which, without reasonable justification or excuse, contravenes any direction issued 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.

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

(5) An exchange holding company shall provide such assistance to the Authority as the Authority may reasonably require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of such books and other information relating to the business of the exchange holding company or any other specified information as the Authority may require for the proper administration of this Act.

(6) An exchange holding company which, without reasonable justification or excuse, contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Removal of officer of exchange holding company

33.—(1) Where the Authority is satisfied that an officer of an exchange holding company —

(a) has wilfully contravened or wilfully caused that exchange holding company to contravene this Act or the business rules of that exchange holding company;

(b) has, without reasonable justification or excuse, failed to enforce compliance with this Act or the business rules of that exchange holding company, by that exchange holding company;

(c) has failed to discharge the duties or functions of his office;

- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
- (e) has an execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interest of the public, or section of the public or for the protection of investors, direct by notice in writing that exchange holding company to remove the officer from office or employment and that exchange holding company shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of an exchange holding company has failed to discharge the duties or functions of his office for the purposes of subsection (1) (c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not direct an exchange holding company to remove an officer from office or employment without giving the exchange holding company an opportunity to be heard.

(4) Where the Authority directs an exchange holding company to remove an officer from office or employment under this section on any ground referred to in subsection (1) (d), (e), (f) or (g), the Authority need not give that exchange holding company an opportunity to be heard.

(5) Where the Authority directs an exchange holding company to remove the officer from office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) An exchange holding company that is aggrieved by the direction of the Authority to remove an officer from office or employment under subsection (1) may, within 30 days after it is notified of the direction, appeal to the Minister whose decision shall be final.

(7) An exchange holding company which, without reasonable justification or excuse, contravenes a written notice issued to it 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.

Control of substantial shareholdings in exchange holding company

34.—(1) No person shall enter into any agreement to acquire shares by virtue of which he would, if the agreement is carried out, acquire a substantial shareholding in an exchange holding company without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to his entering into the agreement.

(2) The Authority may grant its approval referred to in subsection (1) subject to such conditions or restrictions as the Authority may think fit.

(3) Without prejudice to subsection (5), the Authority may, for the purposes of securing compliance with subsection (1) or any condition or restriction imposed under subsection (2), by notice in writing direct the transfer or disposal of all or any of the shares of the exchange holding company in which the substantial shareholder has or has had an interest.

(4) Any person who receives a notice by the Authority under subsection (3) shall transfer or dispose of the number of shares of the exchange holding company which are the subject of such direction, and until such transfer or disposal —

- (a) no voting rights shall be exercisable in respect of that number of shares;
- (b) no shares of the exchange holding company shall be issued or offered (whether by way of rights, bonus or otherwise) in respect of that number of shares; and

- (c) no payment shall be made by the exchange holding company of any sums (whether by way of dividends or otherwise) in respect of that number of shares except in a liquidation of the exchange holding company.

(5) Any person who contravenes subsection (1) or (4) or any condition or restriction imposed by the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

Additional powers of Authority in respect of auditors

35.—(1) If an auditor, in the course of the performance of his duties as an auditor of an exchange holding company, becomes aware —

- (a) of any matter which, in his opinion, adversely affects or may adversely affect the financial position of the exchange holding company to a material extent;
- (b) of any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or a criminal offence involving fraud or dishonesty; or
- (c) of any irregularity that has or may have a material effect upon the accounts, including irregularities that affect or jeopardise or may affect or jeopardise the funds or property of investors in securities or futures contracts,

he shall immediately send to the Authority a report in writing of the matter or the irregularity.

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

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

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

- (a) a duty to submit such additional information and reports in relation to his audit as the Authority considers necessary;

- (b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the exchange holding company;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report on any matter referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

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

(6) For the avoidance of doubt, sections 207 and 208 of the Companies Act (Cap. 50) shall, to the extent to which they may be applicable, apply to the discharge of an auditor's duties under subsection (4).

Division 4 — Recognised Trading System Providers

Power of Authority to recognise trading system providers

36.—(1) The following persons may apply to the Authority for recognition as a recognised trading system provider in such form and manner as may be prescribed:

- (a) a corporation;
- (b) an overseas securities exchange; or
- (c) an overseas futures exchange.

(2) The application shall be accompanied by the prescribed fee.

(3) The Authority may require an applicant to provide the Authority with such further information as it considers necessary in relation to the application, in such form or verified in such manner as the Authority may direct.

(4) The Authority may, in writing, subject to such conditions or restrictions as it may think fit to impose, recognise an applicant as a recognised trading system provider if the Authority is satisfied that —

- (a) the applicant will ensure that, as far as is reasonably practicable, it will operate an orderly, informed and fair securities market or futures market;
- (b) the applicant will manage any risks associated with the applicant's business and operations prudently;

- (c) the applicant, in discharging its obligations under paragraph (a), will not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) the applicant shall enforce compliance by its members with, its business rules and, where appropriate, its listing rules;
- (e) the business rules and, where appropriate, listing rules of the applicant make satisfactory provision —
 - (i) for an orderly, informed and fair market in securities or futures contracts that are traded through its facilities; and
 - (ii) for the proper regulation and supervision of its members;
- (f) the applicant has sufficient financial, human and system resources to —
 - (i) establish and operate a fair and efficient securities market or futures market;
 - (ii) meet contingencies or disasters; and
 - (iii) provide adequate security arrangements; and
- (g) it will not be contrary to the interests of the investing public to approve the application.

(5) For the purposes of subsection (4) (f), “contingencies or disasters” includes events such as technical complications occurring within automated systems.

(6) Without limiting the generality of subsection (4) (e), such business rules, and where appropriate, listing rules of the applicant shall make provision —

- (a) for the exclusion from membership of persons who are not of good character and high business integrity;
- (b) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules or, where appropriate, listing rules of the proposed recognised trading system provider;
- (c) with respect to the terms and conditions under which securities may be listed for quotation or quoted on the securities market, or futures contracts may be listed for

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- trading on the futures market, of the proposed recognised trading system provider;
- (d) with respect to the class or classes of securities that may be dealt in or futures contracts that may be traded by members and the terms and conditions governing dealings in securities or trading in futures contracts by members;
 - (e) with respect to fair and properly supervised floor trading practices;
 - (f) with respect to measures to prevent manipulation, market rigging and artificial market conditions in its securities market or futures market;
 - (g) with respect to the recording and publishing of details of trading;
 - (h) with respect to the clearing and other arrangements made and the financial condition of the proposed recognised trading system provider, the clearing house of the proposed recognised trading system provider and the members of the proposed recognised trading system provider, such as to provide reasonable assurance that all obligations arising out of the dealing in securities or trading in futures contracts on the securities market or futures market of that proposed recognised trading system provider will be met;
 - (i) with respect to the establishment of any compensation arrangement, or any other scheme or system accepted by the Authority, which would compensate customers who suffer pecuniary loss through the defalcation of a member, or any of its directors, officers, employees or representatives, in respect of any money or other property that was entrusted to or received by a member, or any of its directors, officers, employees or representatives, for or on behalf of any person or by reason that the member was a trustee of the money or other property; and
 - (j) generally for carrying on the business of the proposed recognised trading system provider with due regard to the interests and protection of the investing public.
- (7) The Authority may impose different conditions or restrictions or give different directions with respect to different applications for recognition as a recognised trading system provider.

(8) An applicant that is aggrieved by the refusal of the Authority to grant a recognition under subsection (4) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(9) The Authority shall give notice in the *Gazette* of any recognised trading system provider that has been recognised under this section.

(10) A recognised trading system provider which contravenes any of the conditions or restrictions imposed under 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.

Overseas securities exchange and overseas futures exchange

37.—(1) An application for recognition under section 36 by an overseas securities exchange or overseas futures exchange must contain the address of a place in Singapore for the service on the applicant of notices or other documents required or authorised to be served on it under this Act.

(2) Without prejudice to section 36, to recognise an overseas securities exchange or overseas futures exchange as a recognised trading system provider, the Authority may additionally require to be satisfied that —

- (a) the applicant is able and willing to co-operate with the Authority in the sharing of information and other ways;
- (b) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated; and
- (c) adequate arrangements exist for co-operation between the applicant and a securities exchange or futures exchange in respect of the supervision of any person which is permitted to trade directly in the securities markets or futures markets established or operated by both the applicant and the securities exchange or futures exchange.

(3) In considering whether it is satisfied that the overseas securities exchange or overseas futures exchange has met the requirements mentioned in subsection (2), the Authority may have regard to —

- (a) the relevant law and practice of the country or territory in which the applicant's head office is situated; and
- (b) the rules and practices of the applicant.

Report by overseas securities exchange and overseas futures exchange

38.—(1) Every recognised trading system provider which is an overseas securities exchange or overseas futures exchange shall submit to the Authority a report, in such manner and containing such information as the Authority may prescribe, at least once in every calendar year.

(2) The report shall contain a statement as to whether any event had occurred in the year preceding the date of the report which may affect the compliance with the requirements specified in section 36 (4) or (6) or any regulations made under section 7 or conditions or restrictions imposed under section 36 (4) by the overseas securities exchange or overseas futures exchange as are required for a person to be recognised as a recognised trading system provider.

(3) The report shall also contain such other information as the Authority may require.

Continuing obligations of recognised trading system provider

39.—(1) A recognised trading system provider shall continue to satisfy the conditions or restrictions as are required for a person to be recognised as a recognised trading system provider, and in particular, the conditions or restrictions specified in section 36 (4) and (6) and any regulations made under section 7.

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

Revocation of recognition

40.—(1) The Authority may, in writing, revoke any recognition granted under section 36 if —

- (a) the recognised trading system provider ceases to operate its securities market or futures market;
- (b) the recognised trading system provider is being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (c) the recognised trading system provider is contravening or is likely to contravene or has contravened any condition or restriction that is applicable to it under this Act;
- (d) the recognised trading system provider is contravening or is likely to contravene or has contravened any direction issued to it by the Authority;
- (e) the recognised trading system provider is operating in a manner that is, in the opinion of the Authority, contrary to the public interest;
- (f) any information provided to the Authority under section 36, 38 or 42 was false or misleading in a material particular; or
- (g) the Authority deems fit upon the application of the recognised trading system provider to cancel the recognition.

(2) For the purposes of subsection (1) (a), a recognised trading system provider shall be deemed to have ceased to operate its securities market or futures market if it has ceased to operate such securities market or futures market for more than 30 days unless it has obtained the prior approval of the Authority to do so, or unless it has ceased to operate such securities market or futures market by virtue of any direction issued by the Authority under section 43.

(3) Subject to subsection (4), the Authority shall not revoke any approval granted to a recognised trading system provider under section 36 without giving the recognised trading system provider an opportunity to be heard.

(4) Where the Authority revokes a recognition granted to a recognised trading system provider under section 36 on any ground referred to in subsection (1) on the basis of any of the following circumstances:

- (a) the recognised trading system provider or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;

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- (b) execution against the recognised trading system provider or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
 - (c) a receiver, a receiver and manager, judicial manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the recognised trading system provider or its substantial shareholder;
 - (d) the recognised trading system provider or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
 - (e) the recognised trading system provider or its substantial shareholder, or any officer of the recognised trading system provider has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly,

the Authority need not give the recognised trading system provider an opportunity to be heard.

(5) A recognised trading system provider that is aggrieved by the decision of the Authority made under subsection (1) may, within 30 days after it 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 determination or withdrawal of the appeal.

(7) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

Effect of revocation

41. Any revocation of recognition referred to in section 40 shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement entered into on the securities market or futures market operated by the recognised trading system provider, whether

the agreement, transaction or arrangement was entered into before or after the revocation of the recognition; or

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

Recognised trading system provider to assist Authority

42.—(1) A recognised trading system provider shall provide such assistance to the Authority as the Authority may reasonably require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of such books and other information relating to the business of the recognised trading system provider or in respect of such dealings in securities or trading in futures contracts or any other specified information as the Authority may require for the proper administration of this Act.

(2) A recognised trading system provider shall immediately notify the Authority if it becomes aware of a financial irregularity or other matter which in the opinion of the recognised trading system provider may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet his legal obligations.

(3) A recognised trading system provider which, without reasonable justification or excuse, contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to issue directions to recognised trading system provider

- 43.—**(1) The Authority may, if it thinks it necessary or expedient —
- (a) for ensuring the fair and orderly conduct of securities markets or futures markets;
 - (b) for ensuring the integrity of, and proper management of systemic risks in, the securities markets or futures markets; or
 - (c) in the interest of the public or a section of the public or for the protection of investors,

issue directions by notice in writing either of a general or specific nature to a recognised trading system provider.

(2) Without prejudice to the generality of subsection (1), any direction issued under that subsection may relate to —

- (a) trading or the termination of trading on or through the facilities of that recognised trading system provider;
- (b) the manner in which a recognised trading system provider carries on its business; or
- (c) any other matter which the Authority considers necessary for the proper administration of this Act,

and the recognised trading system provider shall comply with any such written direction.

(3) A recognised trading system provider which, without reasonable justification or excuse, contravenes a direction issued under subsection (1), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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.

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

Removal of officer of recognised trading system provider

44.—(1) Where the Authority is satisfied that an officer of a recognised trading system provider —

- (a) has wilfully contravened or wilfully caused that recognised trading system provider to contravene this Act;
- (b) has, without reasonable justification or excuse, failed to enforce compliance with this Act or the business rules of the recognised trading system provider, by that recognised trading system provider or a member of that recognised trading system provider or a person associated with that member;
- (c) has failed to discharge the duties or functions of his office;
- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;

- (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interest of the public, or section of the public or for the protection of investors, direct by notice in writing that recognised trading system provider to remove the officer from office or employment, and the recognised trading system provider shall comply with such notice, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of a recognised trading system provider has failed to discharge the duties or functions of his office for the purposes of subsection (1) (c), have regard to such criteria as may be prescribed or as may be specified in written directions.

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

(4) Where the Authority directs a recognised trading system provider to remove the officer from office or employment under this section on any ground referred to in subsection (1) (d), (e), (f) or (g), the Authority need not give that recognised trading system provider an opportunity to be heard.

(5) Where the Authority directs a recognised trading system provider to remove the officer from office or employment under subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) A recognised trading system provider that is aggrieved by the direction of the Authority to remove an officer from office or employment under subsection (1) may, within 30 days after it is notified of the direction, appeal to the Minister whose decision shall be final.

(7) A recognised trading system provider which, without reasonable justification or excuse, contravenes a written notice issued to it 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.

Power of Authority to approve futures contracts

45.—(1) No recognised trading system provider shall permit the trading of any futures contract on a futures market established or operated by the recognised trading system provider without the prior approval of the Authority.

(2) The Authority may grant approval for the trading of any futures contract on a futures market established or operated by a recognised trading system provider subject to such conditions or restrictions as the Authority may think fit.

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

(4) A recognised trading system provider which contravenes any of the conditions or restrictions specified under this section 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.

Additional powers of Authority in respect of auditors

46.—(1) If an auditor, in the course of the performance of his duties as an auditor of a recognised trading system provider, becomes aware —

- (a) of any matter which, in his opinion, adversely affects or may adversely affect the financial position of the recognised trading system provider to a material extent;
- (b) of any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or a criminal offence involving fraud or dishonesty; or

- (c) of any irregularity that has or may have a material effect upon the accounts, including irregularities that affect or jeopardise or may affect or jeopardise the funds or property of investors in securities or futures contracts,

he shall immediately send to the Authority a report in writing of the matter or the irregularity.

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

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

(4) The Authority may impose all or any of the following duties on an auditor of a recognised trading system provider:

- (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 recognised trading system provider;
- (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 referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

(5) The recognised trading system provider shall remunerate the auditor in respect of the discharge by him of all or any of the duties referred to in subsection (4).

(6) For the avoidance of doubt, sections 207 and 208 of the Companies Act (Cap. 50) shall, to the extent to which they may be applicable, apply to the discharge of an auditor's duties under subsection (4).

Application of certain provisions in Division 2

47. Sections 16, 17, 20, 23, 24 and 48 shall apply, with any modifications as the Authority may deem appropriate, to such recognised trading system providers as the Authority may determine by notice in writing.

*Division 5 — Immunity***Immunity from criminal or civil liability**

48. No criminal or civil liability shall be incurred by —

- (a) a securities exchange or futures exchange;
- (b) any person acting on behalf of a securities exchange or futures exchange, including —
 - (i) any member of the board of directors of the securities exchange or futures exchange; or
 - (ii) any member of any committee established by the securities exchange or futures exchange,

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this Act or the business rules or, where appropriate, listing rules of the securities exchange or futures exchange.

PART III**CLEARING FACILITIES***Division 1 — Interpretation***Interpretation of this Part**

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

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

“default rules”, in relation to a clearing house, means the business rules of a clearing house which provide for the taking of proceedings or other action if a participant has failed, or appears to be unable, or likely to become unable, to meet his obligations for all unsettled or open market contracts to which he is a party;

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

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

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

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

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

“market contract” means —

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

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

“participant” means a person who, under the business rules of a clearing house, may participate in one or more of the services provided by the clearing house in its capacity as a clearing house;

“property” means —

(a) money, letters of credit, banker’s drafts, certified cheques, guarantees or other similar instruments;

(b) securities;

(c) futures contracts and any similar financial contracts; or

(d) other assets of value acceptable to the clearing house;

“relevant office holder” means —

(a) the Official Assignee exercising his powers under the Bankruptcy Act (Cap. 20);

(b) a person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager, judicial manager or an equivalent officer; or

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

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

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

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

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

- (a) the Bankruptcy Act (Cap. 20);
(b) Parts VIIIA, IX and X of the Companies Act (Cap. 50); and
(c) any other written law whether of Singapore or a place outside Singapore which is concerned with or in any way related to the bankruptcy or insolvency of a person,

but does not include the Banking Act (Cap. 19).

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

Division 2 — Clearing Houses

Establishment of clearing house

50.—(1) Subject to subsections (2) and (3), no person shall establish or operate or assist in establishing or operating or hold himself out as operating a clearing facility unless that person has been approved by the Authority as a clearing house under section 51.

(2) Subsection (1) shall not apply to a holder of a capital markets services licence or an exempt person whose carrying on of the activities referred to in subsection (1) is incidental to its clearing or settlement of transactions as a member of a securities exchange, futures exchange or recognised trading system provider.

(3) The Authority may declare any clearing facility or class of clearing facilities to be exempt from the prohibition under subsection (1), subject to such conditions or restrictions as it may think fit to impose.

(4) The Authority may revoke any exemption granted under subsection (3) if —

- (a) the person ceases to operate its clearing facility;
- (b) the person is being wound up or otherwise dissolved;
- (c) the person is contravening or is likely to contravene or has contravened any condition or restriction of its approval or that is applicable to it under this Act;
- (d) the person is contravening or is likely to contravene or has contravened any direction issued to it by the Authority;
- (e) the person is operating in a manner that is, in the opinion of the Authority, contrary to the public interest.

(5) For the purposes of subsection (4) (a), a person shall be deemed to have ceased to operate its clearing facility if it has ceased to operate such facility for more than 30 days, unless it has obtained the prior approval of the Authority to do so.

(6) Subject to subsection (7), the Authority shall not revoke any exemption granted to a person under subsection (3) without giving the person an opportunity to be heard.

(7) Where the Authority revokes an exemption granted to a person under subsection (3) on any ground referred to in subsection (4) on the basis of any of the following circumstances:

- (a) the person or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the person or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, receiver and manager, judicial manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the person or its substantial shareholder;
- (d) the person or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or

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

- (e) the person or its substantial shareholder, or any officer of the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly,

the Authority need not give the person an opportunity to be heard.

(8) A person that is aggrieved by the decision of the Authority made under subsection (4) may, within 30 days after it is notified of the decision, appeal to the Minister whose decision shall be final.

(9) Notwithstanding the lodging of an appeal under subsection (8), any action taken by the Authority under this section shall continue to have effect pending the determination or withdrawal of the appeal.

(10) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

(11) Any revocation of exemption granted to a person under subsection (4) shall not operate so as to —

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

(12) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(13) Any person who contravenes any of the conditions or restrictions imposed under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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.

Power of Authority to approve clearing house

51.—(1) A corporation may apply to the Authority for approval to be a clearing house in such form and manner as the Authority may prescribe.

(2) The application shall be accompanied by the prescribed fee.

(3) The Authority may require a corporation to provide the Authority with such further information as it considers necessary in relation to the application, in such form or verified in such manner as the Authority may direct.

(4) The Authority may, in writing, subject to such conditions or restrictions as it may think fit to impose, approve a corporation as a clearing house if the Authority is satisfied that —

- (a) the corporation will ensure that, as far as is reasonably practicable, there are orderly, fair and expeditious clearing arrangements for transactions in securities or futures contracts;
- (b) the corporation will manage any risks associated with its business and operations prudently;
- (c) the corporation, in discharging its obligations under paragraph (a), will not act contrary to the interests of the public, having particular regard to the interests of the investing public;
- (d) the corporation will enforce compliance by its members with its business rules;
- (e) the business rules of the corporation make satisfactory provision for —
 - (i) the proper regulation and efficient operation of the clearing facility which it operates; and
 - (ii) the proper regulation and supervision of its members;
- (f) the corporation has sufficient financial, human and system resources to —
 - (i) establish and operate an orderly, fair and expeditious clearing facility;

- (ii) meet contingencies or disasters; and
- (iii) provide adequate security arrangements; and
- (g) it would not be contrary to the interests of the investing public to approve the application.

(5) The Authority may impose different conditions or restrictions or give different directions with respect to different applications for approval to be a clearing house.

(6) An applicant that is aggrieved by the refusal of the Authority to grant an approval under subsection (4) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

(7) The Authority shall give notice in the *Gazette* of any clearing house that has been approved under this section.

(8) A clearing house which contravenes any of the conditions or restrictions imposed under 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.

(9) For the purposes of subsection (4) (f), “contingencies or disasters” includes, but is not limited to, events such as technical complications occurring within automated systems operated by the clearing house.

Business rules of clearing house

52. Without limiting the generality of section 51 (4) (e), the business rules of a clearing house shall make satisfactory provision —

- (a) for the registration of or transfer of securities or futures contracts;
- (b) for the settlement of transactions involving securities or futures contracts;
- (c) for guaranteeing to its members the performance of futures contracts;
- (d) for the expulsion, suspension or disciplining of members for any contravention of the business rules of the clearing house;

- (e) for the taking of proceedings or other action if a member has failed, or appears to be unable, or likely to become unable, to meet his obligations for all unsettled or open market contracts to which he is a party; and
- (f) generally for the carrying on of the business of the proposed clearing house with due regard to the interests and protection of the investing public.

Power of Authority to make regulations

53.—(1) Without prejudice to section 341, the Authority may make regulations relating to the approval of and the requirements applicable to a clearing house.

(2) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may impose a fine not exceeding \$200,000.

Continuing obligations of clearing house

54.—(1) A clearing house shall continue to satisfy such conditions or restrictions imposed on it or as are required for the corporation to be approved as a clearing house, and in particular, the requirements specified in sections 51 (4) and 52 and any regulations made under section 53.

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

Revocation of approval

55.—(1) The Authority may revoke any approval granted under section 51 to a corporation if —

- (a) the corporation ceases to operate its clearing facility;
- (b) the corporation is being wound up or otherwise dissolved;
- (c) the corporation is contravening or is likely to contravene or has contravened any condition or restriction of its approval or that is applicable to it under this Act;
- (d) the corporation is contravening or is likely to contravene or has contravened any direction issued to it by the Authority;

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- (e) the corporation is operating in a manner that is, in the opinion of the Authority, contrary to the public interest;
 - (f) any information provided by the corporation to the Authority under section 51 was false or misleading in a material particular; or
 - (g) the Authority deems fit upon the application of a corporation to cancel the approval.

(2) For the purposes of subsection (1) (a), a corporation shall be deemed to have ceased to operate its clearing facility if it has ceased to operate such facility for more than 30 days unless —

- (a) it has obtained the prior approval of the Authority to do so; or
- (b) it has ceased to operate such facility by virtue of any direction issued by the Authority under section 63.

(3) Subject to subsection (4), the Authority shall not revoke any approval granted to a corporation under section 51 without giving the corporation an opportunity to be heard.

(4) Where the Authority revokes an approval granted to a corporation under section 51 on any ground referred to in subsection (1) on the basis of any of the following circumstances:

- (a) the corporation or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) execution against the corporation or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, receiver and manager, judicial manager or equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation or its substantial shareholder;
- (d) the corporation or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (e) the corporation or its substantial shareholder, or any officer of the corporation has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or

the conviction for which involved a finding that it or he acted fraudulently or dishonestly,

the Authority need not give the corporation an opportunity to be heard.

(5) A corporation that is aggrieved by the decision of the Authority made under subsection (1) may, within 30 days after it 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 determination or withdrawal of the appeal.

(7) The Minister may make such modification to any action taken by the Authority that is the subject of an appeal and such modified action shall have effect.

Effect of revocation

56. Any revocation of approval referred to in section 55 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 or after the revocation of the approval; or
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

Clearing house to assist Authority

57.—(1) A clearing house shall provide such assistance to the Authority as the Authority may reasonably require for the performance of the functions and duties of the Authority, including the furnishing of such returns and the provision of such books and other information relating to the business of the clearing house or in respect of any dealings in securities or trading in futures contracts, any clearing arrangements for securities or futures contracts or any other specified information as the Authority may require for the proper administration of this Act.

(2) A clearing house shall immediately notify the Authority if it becomes aware of a financial irregularity or other matter which in the opinion of the clearing house may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet its legal obligations.

(3) A clearing house which, without reasonable justification or excuse, contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Business rules of clearing house have effect as contract

58.—(1) The business rules of a clearing house shall operate as a binding contract —

- (a) between the clearing house and each issuer;
- (b) between the clearing house and each participant;
- (c) between each issuer and each participant; and
- (d) between a participant and any other participant,

under which each of the persons mentioned in paragraphs (a) to (d) agrees to observe and perform the provisions of the business rules as are in force for the time being, so far as those provisions are applicable to that person.

(2) For the purposes of this section, “issuer”, in relation to a security, means a person who issued or made available, or proposes to issue or make available, the security that is cleared or settled through the clearing facility operated by the clearing house.

Authority to be notified of amendments to business rules

59.—(1) A clearing house that proposes to make any amendment by way of rescission, substitution, alteration or addition to its business rules shall immediately inform the Authority of the proposed amendment by written notice which shall state the date on which the amendment is proposed to be made, an explanation of the purpose of the amendment and provide the text of the amendment.

(2) If the notice required to be given under subsection (1) is not given at least 21 days before the making of the amendment, that amendment shall not come into force.

(3) The Authority may, within 21 days after the receipt of a notice under subsection (1), by notice in writing to the clearing house, disallow, alter or supplement the whole or any specified part of the amendment in question and, thereupon such whole or specified part of the amendment, as the case may be —

- (a) where it is disallowed, shall not come into force; or
- (b) where it is altered or supplemented, shall come into force accordingly.

(4) The Authority may, in its discretion, by notice in writing to the clearing house, extend the period specified in subsection (3), and where the period is extended, the amendment shall not come into force before the expiry of the extended period.

(5) In addition to the power conferred upon the Authority under subsection (3), the Authority may of its own motion, by notice in writing to a clearing house, alter or supplement the business rules of the clearing house, or alter or supplement the terms and conditions for the clearing or settlement of any securities or futures contract by the clearing house, if it considers that such action is necessary for the protection of investors or to ensure an orderly, fair and expeditious clearing facility.

Power of court to order observance or enforcement of business rules

60.—(1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a clearing house, fails to comply with, observe, enforce or give effect to any of those business rules, the High Court may, on the application of the Authority, a clearing house or a person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity to be heard, make an order directing that person to comply with, observe or enforce, or give effect to, those business rules.

(2) For the purposes of this section, “person” includes a clearing house.

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

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

61. Any failure by a 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 a person entitled to require compliance with the business rules.

Review of disciplinary action taken by clearing house

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

(2) The Authority may, on its own motion or on application by an aggrieved person, review any disciplinary action taken by a clearing house under subsection (1) and may affirm, modify or set aside the decision of the clearing house after giving the member and the clearing house an opportunity to be heard.

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

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

Power of Authority to issue directions to clearing house

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

- (a) for ensuring fair and orderly securities markets or futures markets, or for ensuring fair, orderly and expeditious clearing and settlement of transactions in securities or futures contracts;

- (b) for ensuring the integrity of, and proper management of systemic risks in securities markets or futures markets; or
- (c) in the interests of the public or section of the public or for the protection of investors,

issue directions by notice in writing either of a general or specific nature to a clearing house.

(2) Without prejudice to the generality of subsection (1), any direction issued under that subsection may relate to —

- (a) the clearing or settlement of securities or futures contracts and the making of adjustments of contractual obligations arising out of those securities or futures contracts;
- (b) the manner in which a clearing house carries on its business; and
- (c) any other matter which the Authority considers necessary for the proper administration of this Act,

and the clearing house shall comply with any such direction.

(3) A clearing house which, without reasonable justification or excuse, contravenes a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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.

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

Removal of officer of clearing house

64.—(1) Where the Authority is satisfied that an officer of a clearing house —

- (a) has wilfully contravened or wilfully caused that clearing house to contravene this Act or the business rules of that clearing house;
- (b) has, without reasonable justification or excuse, failed to enforce compliance with this Act or the business rules of the clearing house, by that clearing house a member of that clearing house or a person associated with that member;
- (c) has failed to discharge the duties or functions of his office;

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- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
 - (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
 - (f) has, whether in Singapore or elsewhere, made a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
 - (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interests of the public, or section of the public or for the protection of investors, direct by notice in writing that clearing house to remove the officer from office or employment, notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of a clearing house has failed to discharge his duties or functions of his office for the purposes of subsection (1) (c), have regard to such criteria as may be prescribed or as may be specified in written directions.

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

(4) Where the Authority directs a clearing house to remove an officer from office or employment under this section on any ground referred to in subsection (1) (d), (e), (f) or (g), the Authority need not give that clearing house an opportunity to be heard.

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

(6) A clearing house that is aggrieved by the direction of the Authority to remove an officer from office or employment under subsection (1) may, within 30 days after it is notified of the direction, appeal to the Minister whose decision shall be final.

(7) A clearing house which, without reasonable excuse, fails or refuses to comply with a written notice issued to it 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.

Emergency powers of Authority

65.—(1) Where the Authority has reason to believe that an emergency exists, or where it is necessary or expedient in the interests of the public or section of the public or for the protection of investors, the Authority may direct by notice in writing a clearing house to take such action as it considers necessary including but not limited to —

- (a) altering conditions of delivery;
- (b) fixing the settlement price at which securities or futures contracts are to be liquidated;
- (c) requiring margins or additional margins for any securities or futures contracts; and
- (d) modifying or suspending any of the business rules of the clearing house,

and the clearing house shall comply with that direction.

(2) Where a clearing house fails to comply with the direction of the Authority under subsection (1) within such time as is specified by the Authority, the Authority may —

- (a) set emergency margin levels in any securities or futures contract or class of securities or futures contracts; or
- (b) take such other action, including but not limited to those specified in subsection (1), as the Authority thinks fit to maintain or restore fair, orderly and expeditious clearing and settlement of transactions in securities or futures contracts or any class of securities or futures contracts.

(3) In this section, “emergency” means threatened or actual market manipulations and corners, and includes —

- (a) any act of government affecting a commodity;
- (b) any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity; or

(c) any other undesirable situations or practices which in the opinion of the Authority constitutes an emergency.

(4) Without prejudice to subsection (1), where a clearing house takes emergency action under subsection (1), the Authority may modify such emergency action, including but not limited to the setting aside of that emergency action.

(5) Any person who is aggrieved by any action taken by the Authority or a clearing house under this section may, within 30 days after he 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 emergency action taken by the Authority or a clearing house under this section shall continue to have effect pending the determination or withdrawal of the appeal.

(7) The Minister may make such modification to any emergency action, taken by the Authority or a clearing house, that is the subject of an appeal and such modified emergency action shall have effect.

Additional powers of Authority in respect of auditors

66.—(1) If an auditor, in the course of the performance of his duties as an auditor of a clearing house, becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the 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 a criminal offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts, including irregularities that affect or jeopardise or may affect or jeopardise the funds or property of investors in securities or futures contracts,

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

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

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

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

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

and the auditor shall carry out such duties.

(5) The 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).

(6) For the avoidance of doubt, sections 207 and 208 of the Companies Act (Cap. 50) shall, to the extent to which they may be applicable, apply to the discharge of an auditor's duties under subsection (4).

Immunity of clearing house, etc.

67. No criminal or civil liability shall be incurred by —

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

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this Act or the business rules of the clearing house, including its default rules.

*Division 3 — Clearing House and Insolvency***Application of this Division**

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

Proceedings of clearing house shall take precedence over law of insolvency

69.—(1) The following shall not be to any extent invalid at law on the ground of inconsistency with the law for distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver, receiver and manager or an equivalent officer over any of the assets of a person:

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

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

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

(3) Subsection (2) shall not operate to prevent a relevant office holder from recovering an amount under section 75 after the completion of a matter referred to in section 75 (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 59A, 61 and 62 of that Act shall have priority over unsecured liabilities of the bank accorded priority under the provisions of this Division.

Supplementary provisions as to default proceedings

70.—(1) A court may, on application by 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

71.—(1) A clearing house shall, upon the completion by it of default proceedings, make a report on such proceedings stating in respect of each defaulter —

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

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

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

(2) A 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) that defaulter's estate;

(c) if there is no relevant office holder referred to in paragraph (b), the defaulter to whom the report relates.

(3) The 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 all 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

72.—(1) This section shall apply to any net sum certified under section 71 (1) (a) by a clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

(2) Notwithstanding section 87 or 88 of the Bankruptcy Act (Cap. 20), and section 327 of the Companies Act (Cap. 50), where a receiving or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum as certified under section 71 (1) (a) shall be —

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

73.—(1) Section 110 of the Bankruptcy Act and section 332 of the Companies Act shall not apply to —

- (a) a market contract;
- (b) a contract effected by a 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 pursuant to —

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

Adjustment of prior transactions

74.—(1) No order shall be made by a court under —

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

in relation to any matter to which this section applies.

(2) The matters to which this section applies are specified 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 a clearing house for the purpose of realising property provided as market collateral;

- (e) a disposition of property in accordance with the business rules of a clearing house as to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
- (g) a disposition of property for the purpose of enforcing a market charge;
- (h) a market charge; and
- (i) any default proceedings.

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

75.—(1) Where a participant (referred to as the first participant) sells securities at an over-value to, or purchases securities at an under-value from, another participant (referred to as the second participant) in circumstances as described 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 of the person referred to in paragraph (b),

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 a clearing house and replaced by a market contract.

(3) The circumstances referred to in subsection (1) for a sale or purchase shall be when —

- (a) a specified event has occurred in relation to the second participant or the principal of the second participant;

(b) either —

- (i) 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; or
- (ii) the principal of the first participant knew or ought reasonably to have known that a specified event was likely to occur to the second participant or the principal of the second participant,

and the specified event occurs within the period of 6 months immediately following the date on which the sale or purchase was entered into.

(4) In this section —

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

- (a) the making of a bankruptcy order against the second participant or that person, as the case may be;
- (b) the making of a statutory declaration in respect of the second participant or that person, as the case may be, under section 291 (1) of the Companies Act (Cap. 50);
- (c) the summoning of a meeting of creditors in relation to the second participant or that person, as the case may be, under section 296 of the Companies Act;
- (d) the presentation of a petition for the winding up of the second participant or that person, as the case may be, before a court; or
- (e) the making of a judicial management order by a court under Part VIIIA of the Companies Act in respect of the second participant or that person, as the case may be;

“specified gain”, in relation to a sale or purchase referred to in subsection (1), means the difference between —

- (a) the market value of the securities which is the subject of the sale or purchase; and

(b) the value of the consideration for the sale or purchase, as at the time the sale or purchase was entered into.

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

76.—(1) The provisions of this section shall have effect with respect to the application by a clearing house of property provided as market collateral (referred to as the property).

(2) The property may be applied in accordance with the business rules of a 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 clearing house had actual notice of the interest, right or breach of duty (but not including 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 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 clearing house in accordance with its business rules.

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

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

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

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or 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

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

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

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

(2) For the purposes of 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

79.—(1) Where a participant —

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

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

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

(2) Where —

- (a) 2 or more participants in their capacities as such enter into any transaction; and

(b) but for this subsection, any of the participants would be a party to that transaction as agent,

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

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

Preservation of rights, etc.

80. Except to the extent that it expressly provides, this Division shall not operate to limit, restrict or otherwise affect —

- (a) any right, title, interest, privilege, obligation or liability of a person; or
- (b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

Immunity from criminal or civil liability

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

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

in respect of anything done or omitted to be done with reasonable care and in good faith in 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 a clearing house, and reasonably believes or has reasonable grounds for believing that he is entitled to take that action, he shall not be liable to any person in respect of any loss or

damage resulting from his action except in so far as the loss or damage (as the case may be) is caused by the office holder's own negligence.

PART IV

CAPITAL MARKETS SERVICES LICENCE AND REPRESENTATIVE'S LICENCE

Division 1 — Licensing

Capital markets services licence to carry on business in regulated activities

82.—(1) Subject to subsection (2) and section 99, no person shall, whether as principal or agent, carry on business in any regulated activity or hold himself out as carrying on such business unless he is the holder of a capital markets services licence for that regulated activity.

(2) Subsection (1) shall not apply to any person specified in the Third Schedule.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Representative's licence

83.—(1) Subject to subsection (2), no person shall act as a representative in carrying on business in any regulated activity or hold himself out as doing so, unless he is the holder of a representative's licence for that regulated activity.

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

- (a) any person who acts as a representative of an exempt person; and
- (b) any person whom the Authority may by regulation exempt from holding a representative's licence in respect of any regulated activity.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 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.

Application for and renewal of licence

84.—(1) An application for a licence or for the renewal of a licence shall be made to the Authority in such form and manner as the Authority may prescribe and, in the case of an application for renewal of a licence, shall be made not later than one month or such other period as the Authority may prescribe, before the expiry of the licence.

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

(3) An application for a licence or for the renewal of a licence shall be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.

(4) An application for a representative's licence or for the renewal of a representative's licence in respect of any regulated activity shall be supported in the prescribed manner by a principal who is the holder of or who has applied for a capital markets services licence for that regulated activity.

(5) An application for a representative's licence or for the renewal of a representative's licence in respect of any regulated activity shall be deemed to be withdrawn if —

- (a) the principal withdraws his support of the application in writing; or
- (b) the principal's application for a capital markets services licence in respect of that regulated activity is withdrawn by the principal or refused by the Authority.

(6) Where a person submits an application for renewal of his licence before the expiration of his licence but after the period referred to in subsection (1), the Authority may impose a late renewal fee not exceeding \$100 for every day or part thereof that the renewal is late, subject to a maximum of \$3,000.

(7) Where a person would but for this section be guilty of an offence for not being the holder of a particular licence, if before the expiration of that licence he has applied for renewal of that licence and he complies with the requirements of this Act as though he were the holder of that licence, he shall not be guilty of the offence for the period from the expiry of that licence until that licence is renewed or his application for renewal is withdrawn or refused.

Licence fee

85.—(1) A licensed person shall pay such licence fee in respect of each regulated activity as may be prescribed by the Authority.

(2) Any licence fee paid to the Authority in respect of any regulated activity shall not be refunded if —

- (a) the licence is revoked or suspended, or lapses during the period to which the licence fee relates;
- (b) the licence fee is paid in relation to an application for the renewal of a licence and such application is withdrawn after the date on which, but for its renewal, the licence would have expired;
- (c) the licensed person ceases to carry on business in that regulated activity during the period to which the licence fee relates; or
- (d) a prohibition order has been made against the licensed person under section 95.

(3) Subject to subsection (2), the Authority may, where it considers appropriate, refund the whole or part of any licence fee paid to it.

Grant of capital markets services licence

86.—(1) A corporation may make an application for a capital markets services licence to carry on business in one or more regulated activities.

(2) In granting a capital markets services licence, the Authority shall specify the regulated activity or activities to which the licence relates, described in such manner as the Authority considers appropriate.

(3) A capital markets services licence shall only be granted if the applicant meets such minimum financial and other requirements

as the Authority may prescribe, either generally or specifically, or as are provided in the business rules of a securities exchange, futures exchange or recognised trading system provider.

(4) Subject to regulations made under this Act, where an application is made for the grant or renewal of a capital markets services licence, the Authority may refuse the application if —

- (a) the applicant has not provided the Authority with such information relating to it or any person employed by or associated with it for the purposes of its business, and to any circumstances likely to affect its manner of conducting business, as the Authority may require;
- (b) the applicant or its substantial shareholder is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (c) execution against the applicant or its substantial shareholder in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (d) a receiver, a receiver and manager, judicial manager or such other person having the powers and duties of a receiver, receiver and manager or judicial manager, has been appointed whether in Singapore or elsewhere in relation to, or in respect of, any property of the applicant or its substantial shareholder;
- (e) the applicant or its substantial shareholder has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (f) the applicant or its substantial shareholder, or any officer of the applicant —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it or he acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (g) the Authority is not satisfied as to the educational or other qualification or experience of the officers or employees of the applicant having regard to the nature of the duties they are to perform in connection with the holding of the licence;

- (h) the applicant fails to satisfy the Authority that it is a fit and proper person to be licensed or that all of its officers, employees and substantial shareholders are fit and proper persons;
- (i) the Authority has reason to believe that the applicant may not be able to act in the best interests of its subscribers or customers having regard to the reputation, character, financial integrity and reliability of the applicant or its substantial shareholders, officers or employees;
- (j) the Authority is not satisfied as to the financial standing of the applicant or its substantial shareholders or the manner in which the applicant's business is to be conducted;
- (k) the Authority is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the business which the applicant may carry on in connection with the holding of the licence;
- (l) there are other circumstances which are likely to —
 - (i) lead to the improper conduct of business by the applicant, any of its officers or employees, or its substantial shareholders; or
 - (ii) reflect discredit on the manner of conducting the business of the applicant or its substantial shareholders;
- (m) the Authority has reason to believe that the applicant, or any of its officers, will not perform the functions for which the applicant seeks to be licensed, efficiently, honestly or fairly; or
- (n) the Authority is of the opinion that it would be contrary to the interests of the public to grant or renew the licence.

(5) Subject to subsection (6), the Authority shall not refuse an application for a grant or renewal of a capital markets services licence without giving the applicant a right to be heard.

(6) Where the Authority refuses an application for a grant or renewal of a capital markets services licence on any of the grounds described in subsection (4) (b), (c), (d), (e) or (f) (i), the Authority need not give the applicant an opportunity to be heard.

Grant of representative's licence

87.—(1) A natural person may apply to the Authority in such form and manner as the Authority may prescribe for a representative's licence to act as a representative to carry on business in one or more regulated activities.

(2) In granting a representative's licence, the Authority shall —

- (a) specify the regulated activity or activities to which the licence relates, described in such manner as the Authority considers appropriate; and
- (b) relate the licence to the principal who supported that application for a representative's licence.

(3) Subject to regulations made under this Act, where an application is duly made for the grant or renewal of a representative's licence, the Authority may refuse the application if —

- (a) the applicant has not provided the Authority with such information relating to him as the Authority may require;
- (b) the applicant is an undischarged bankrupt whether in Singapore or elsewhere;
- (c) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (d) the applicant has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) the applicant —
 - (i) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or
 - (ii) has been convicted of an offence under this Act;
- (f) the Authority is not satisfied as to the educational or other qualification or experience of the applicant having regard to the nature of the duties he is to perform in connection with the holding of the licence;
- (g) the applicant fails to satisfy the Authority that he is a fit and proper person to be licensed;

- (h) the Authority has reason to believe that the applicant may not be able to act in the best interests of the subscribers or customers of his principal having regard to his reputation, character, financial integrity and reliability;
- (i) the Authority is not satisfied as to the financial standing of the applicant;
- (j) the Authority is not satisfied as to the record of past performance or expertise of the applicant having regard to the nature of the duties which he may perform in connection with the holding of the licence;
- (k) there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the applicant or any person employed by or associated with him for the purpose of his business;
- (l) the applicant is in arrears in the payment of such contributions on his own behalf to the Central Provident Fund as are required under the Central Provident Fund Act (Cap. 36);
- (m) the Authority has reason to believe that the applicant will not perform the functions for which he seeks to be licensed, efficiently, honestly or fairly; or
- (n) the Authority is of the opinion that it would be contrary to the interests of the public to grant or renew the licence.

(4) Subject to subsection (5), the Authority shall not refuse an application for a grant or renewal of a representative's licence without giving the applicant an opportunity to be heard.

(5) Where the Authority refuses an application for a grant or renewal of a representative's licence on any of the grounds described in subsection (3) (b), (c), (d) or (e) (i), the Authority need not give the applicant an opportunity to be heard.

Power of Authority to impose conditions or restrictions

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

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

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

(4) Where the Authority imposes or varies any condition or restriction under this section, the Authority need not give the licensed person an opportunity to be heard.

Period of licence

89.—(1) Subject to subsection (2), a licence shall be in force for a period of 3 years or such other period as the Authority may specify in writing to the applicant, with effect from the date of its issue.

(2) A licence that has been renewed in accordance with the provisions of this Part shall continue in force for a period of 3 years or such other period as the Authority may specify in writing to the applicant, from the day next succeeding that upon which but for its renewal it would have expired.

Variation of licence

90.—(1) The Authority may, on the application of a licensed person, vary its licence by adding a regulated activity to those already specified in the licence.

(2) An application referred to in subsection (1) shall be accompanied by a non-refundable prescribed application fee which shall be paid in the manner specified by the Authority.

(3) The Authority may —

- (a) approve the application subject to such conditions or restrictions as the Authority thinks fit; or
- (b) refuse the application on any of the grounds set out in section 86 (4) or 87 (3).

Deposit to be lodged in respect of capital markets services licence

91.—(1) The Authority may, in granting, renewing or varying a capital markets services licence, require the applicant to lodge with the Authority, at the time of its application and in such manner as the Authority may determine, a deposit of such amount in cash or in such other form as the Authority may prescribe in respect of that licence.

(2) The Authority may prescribe the circumstances and purposes for the use of the deposit.

False statements

92. Any person who, in connection with an application for a licence or the renewal or variation of a licence, wilfully makes a statement which is false or misleading in a material particular, knowing it to be false or misleading, or wilfully omits to state any matter or thing without which the application is misleading in a material respect, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

Notification of change of particulars

93.—(1) Where —

- (a) the holder of a capital markets services licence ceases to carry on business in any of the regulated activities to which the licence relates;
- (b) the holder of a representative's licence ceases to be a representative of the principal in relation to whom the representative's licence was issued; or
- (c) a change occurs in any matter particulars of which are required by section 94 to be entered in the register of licensed persons in relation to the licensed person,

the licensed person shall, not later than 14 days after the occurrence of the event concerned, give to the Authority, in the prescribed form and manner, particulars in writing of the event concerned.

(2) Where a licensed person ceases to carry on, or ceases to act as a representative in carrying on, business in all the regulated activities to which the licence relates, it shall forthwith return the licence to the Authority.

Register of licensed persons

94. The Authority shall keep in such form as it thinks fit a register of licensed persons specifying —

- (a) in relation to the holder of a capital markets services licence —
 - (i) its name;
 - (ii) the address of the principal place of business at which it carries on the business in respect of which the licence is held;

- (iii) the regulated activity or activities to which its licence relates;
 - (iv) where the business is carried on under a name or style other than the name of the holder of the licence, the name or style under which the business is carried on; and
 - (v) such other information as may be prescribed;
- (b) in relation to the holder of a representative's licence —
- (i) his name;
 - (ii) the name of his principal in relation to whom the licence was granted;
 - (iii) the regulated activity or activities to which his licence relates;
 - (iv) where the business of his principal is carried on under a name or style, other than the name of the principal, the name or style under which that business is carried on; and
 - (v) such other information as may be prescribed.

Lapsing, revocation and suspension of licence

95.—(1) A licence shall lapse —

- (a) in the case of a holder of a capital markets services licence, if the holder is wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) in the case of a representative, if the representative dies; and
- (c) in the event of such other occurrence or in such other circumstances as may be prescribed.

(2) The Authority may revoke a licence —

- (a) in the case of a holder of a capital markets services licence —
 - (i) on any ground on which the Authority may refuse to grant a licence under section 86;
 - (ii) if it fails or ceases to carry on the business in all the regulated activities for which it was licensed;
 - (iii) if the Authority has reason to believe that the holder of the capital markets services licence, or any of its officers or employees, has not performed its duties efficiently, honestly or fairly; or

(iv) if the holder of the capital markets services licence contravenes any condition or restriction applicable in respect of its licence, any direction issued to it by the Authority under this Act, or any other provision in this Act; and

(b) in the case of a representative —

- (i) on any ground on which the Authority may refuse to grant a licence under section 87;
- (ii) if he fails or ceases to act as a representative in carrying on business in all the regulated activities for which he was licensed;
- (iii) if the licence of his principal is revoked;
- (iv) if the Authority has reason to believe that he has not performed his duties efficiently, honestly or fairly; or
- (v) if he contravenes any condition or restriction applicable in respect of his licence, any direction issued to him by the Authority under this Act or any other provision in this Act.

(3) In a case to which subsection (2) applies, the Authority, if it considers it desirable to do so, may instead of revoking a licence, suspend the licence for a specific period and may at any time extend or cancel the suspension.

(4) Subject to subsection (5), the Authority shall not revoke or suspend a licence under subsection (2) or (3) without giving the licensed person an opportunity to be heard.

(5) Where the Authority revokes or suspends a licence on any of the grounds described in section 86 (4) (b), (c), (d), (e) or (f) (i) in the case of a capital markets services licence, or on any of the grounds described in section 87 (3) (b), (c), (d) or (e) (i) in the case of a representative's licence, the Authority need not give the licensed person an opportunity to be heard.

(6) Without prejudice to subsections (2) and (3), the Authority may, on any ground described in subsection (2), issue an order prohibiting the licensed person from performing one or more of the regulated activities to which its licence relates and the order may be permanent or for such period as may be determined by the Authority (referred to in this Division as a prohibition order).

(7) The Authority shall not issue an order under subsection (6) without giving the licensed person an opportunity to be heard.

(8) Where the Authority has revoked or suspended a capital markets services licence or issued a prohibition order to a holder of a capital markets services licence, that holder shall —

- (a) in the case of a revocation of its licence, forthwith inform all its representatives by notice in writing of such revocation and the representatives who are so informed shall cease to act as representatives of that holder;
- (b) in the case of a suspension of its licence, forthwith inform all its representatives by notice in writing of such suspension and the representatives who are so informed shall cease to act as representatives of that holder during the period of the suspension; and
- (c) in the case of a prohibition order, forthwith inform all its representatives who perform the regulated activity or activities to which the prohibition order relates, by notice in writing of such prohibition order and the representatives who are so informed shall cease to perform such regulated activity or activities during the period specified in the prohibition order.

(9) Any licensed person who —

- (a) performs a regulated activity while its licence has lapsed or has been revoked or suspended, or in breach of a prohibition order; or
- (b) contravenes subsection (8),

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

(10) A lapsing, revocation, suspension or expiry of a licence of a person or the issue of a prohibition order shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation, suspension or lapsing of the licence or the issue of the prohibition order, as the case may be; or

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

Approval of chief executive officer and director of holder of capital markets services licence

96.—(1) No holder of a capital markets services licence shall appoint a person as its chief executive officer or director in Singapore unless such holder has obtained the approval of the Authority.

(2) For the purposes of subsection (1) and without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether to grant approval, 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 reject an application for approval under this section without giving the holder of the capital markets services licence an opportunity to be heard.

(4) Where the Authority rejects an application for approval under this section on the basis of any of the following circumstances:

- (a) the officer is an undischarged bankrupt whether in Singapore or elsewhere;
- (b) execution against the officer in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) the officer has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (d) the officer has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority need not give the holder of the capital markets services licence an opportunity to be heard.

(5) Where the Authority rejects 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.

(6) In this section “chief executive officer” means any person, by whatever name called, in the direct employment of, or acting for, or by arrangement with a holder of a capital markets services licence,

who is principally responsible for the management and conduct of the business of the holder in Singapore.

Removal of officer of holder of capital markets services licence

97.—(1) Where the Authority is satisfied that an officer of a holder of a capital markets services licence —

- (a) has wilfully contravened or wilfully caused that holder to contravene this Act;
- (b) has without reasonable justification or excuse failed to enforce compliance with this Act;
- (c) has failed to discharge the duties or functions of his office;
- (d) is an undischarged bankrupt whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interest of the public, or section of the public or for the protection of investors direct by notice in writing that holder to remove the officer from office or employment, and that holder shall comply with such notice notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an officer of a holder of a capital markets services licence has failed to discharge the duties or functions of his office for the purposes of subsection (1) (c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) Subject to subsection (4), the Authority shall not direct a holder of a capital markets services licence to remove from office or

employment an officer under this section without giving that holder a right to be heard.

(4) Where the Authority directs a holder of a capital markets services licence to remove the officer from office or employment under this section on any ground referred to in subsection (1) (*d*), (*e*), (*f*) or (*g*), the Authority need not give that holder an opportunity to be heard.

(5) Where the Authority directs a holder of a capital markets services licence to remove from office or employment an officer under subsection (1), the Authority need not give that officer an opportunity to be heard.

(6) No criminal or civil liability shall be incurred by —

- (a) a holder of a capital markets services licence; or
- (b) any person acting on behalf of the holder of a capital markets services licence,

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

Appeals

98.—(1) Subject to subsection (2), any person who is aggrieved by —

- (a) the refusal of the Authority to grant, renew or vary a licence;
- (b) the revocation or suspension of a licence by the Authority;
- (c) the issue of a prohibition order by the Authority;
- (d) the refusal of the Authority to grant an approval to a holder of a capital markets services licence to appoint a person as its chief executive officer or director; or
- (e) the direction of the Authority to a holder of a capital markets services licence to remove an officer from office or employment,

may within 30 days after it is notified of the Authority's decision, appeal to the Minister whose decision shall be final.

(2) An appeal under subsection (1) (*d*) or (*e*) may only be made by the holder of a capital markets services licence.

*Division 2 — Exemptions***Exemptions from requirement to hold capital markets services licence**

99.—(1) The following persons shall be exempted in respect of the following regulated activities from the requirement to hold a capital markets services licence to carry on business in such regulated activities:

- (a) any bank licensed under the Banking Act (Cap. 19) in respect of any regulated activity;
- (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) in respect of any regulated activity which it is approved to carry out under that Act;
- (c) any finance company licensed under the Finance Companies Act (Cap. 108) in respect of any regulated activity that is not prohibited by that Act or for which an exemption from section 25 (2) of that Act has been granted;
- (d) any company or society registered under the Insurance Act (Cap. 142) in respect of fund management for the purpose of carrying out insurance business;
- (e) any person licensed under the Financial Advisers Act 2001 in respect of any regulated activity that is solely incidental to his carrying on of the business for which he is licensed under that Act;
- (f) any securities exchange, futures exchange or recognised trading system provider in respect of any regulated activity that is solely incidental to its operation of a stock market or futures market, as the case may be;
- (g) any clearing house in respect of any regulated activity that is solely incidental to its operation of a clearing facility; and
- (h) such other person or class of persons in respect of any regulated activity as may be prescribed.

(2) Any securities exchange, futures exchange or recognised trading system provider which intends to carry on business in any regulated activity but which does not fall within subsection (1) (f), may apply in writing to the Authority for exemption from the requirement to hold a capital markets services licence and the Authority may grant such exemption if in the Authority's opinion, the

carrying on of the activities referred to in subsection (1) is not a significant business of the securities exchange, futures exchange or recognised trading system provider.

(3) Without prejudice to section 341, the Authority may prescribe the criteria or factors that it will consider in deciding whether to grant an exemption under subsection (2).

(4) The Authority may by regulations or by notice in writing impose such conditions or restrictions on an exempt person or its representative in relation to the conduct of the regulated activity or any related matter as the Authority thinks fit and the exempt person or its representative, as the case may be, shall comply with such conditions or restrictions.

(5) Any exempt person or representative of an exempt person, who contravenes any provision of this Act which is applicable to it or any condition or restriction imposed under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(6) The Authority may revoke an exemption granted to any exempt person under this section —

- (a) if it contravenes any provision of this Act which is applicable to it or any condition or restriction imposed on it under subsection (4);
- (b) if it contravenes any direction issued to it under section 101 (1); or
- (c) if the Authority considers that it is carrying on business in a manner that is, in the opinion of the Authority, contrary to the public interest.

(7) Where the Authority revokes an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

(8) A withdrawal of an exemption shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement relating to the regulated activities entered into by such exempt person, whether the agreement, transaction or arrangement was entered into before or after, the withdrawal of the exemption; or

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

(9) An exempt person that is aggrieved by a decision of the Authority made under subsection (6) may, within 30 days after it is notified of the Authority's decision, appeal to the Minister whose decision shall be final.

Division 3 — General

Power of Authority to make regulations

100.—(1) Without prejudice to section 341, the Authority may make regulations relating to the grant of a capital markets services licence or a representative's licence, and requirements applicable to persons who carry on business in any regulated activity or act as representatives in carrying on such business.

(2) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$100,000.

Power of Authority to issue directions

101.—(1) The Authority may, if it thinks it necessary or expedient in the interest of the public to do so, issue directions by notice in writing either of a general or specific nature to a licensed person, exempt person, representative of an exempt person, or class of such persons.

(2) Without prejudice to the generality of subsection (1), any direction issued under that subsection may relate to —

(a) the standards to be maintained by the person concerned in the conduct of its business; and

(b) the type and frequency of submission of financial returns and other information to be submitted to the Authority,

and the person to whom such direction is issued shall comply with the direction.

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

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

PART V

BOOKS, CUSTOMER ASSETS AND AUDIT

Division 1 — Books

Keeping of books

102.—(1) A holder of a capital markets services licence shall —

- (a) keep, or cause to be kept, such books as will sufficiently explain the transactions and financial position of its business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time; and
- (b) keep or cause to be kept, such books in such a manner as will enable them to be conveniently and properly audited.

(2) An entry in the books of a holder of a capital markets services licence required to be kept in accordance with this section shall be deemed to have been made by, or with the authority of, the holder.

(3) A holder of a capital markets services licence shall retain such books as may be required to be kept under this Act for a period of not less than 6 years.

(4) A holder of a capital markets services licence shall —

- (a) furnish such returns and records in such form and manner as may be prescribed or as may be notified by the Authority in writing; and
- (b) provide such information relating to its business as the Authority may require.

(5) The Authority may, without prejudice to section 341, make regulations in respect of all or any of the matters in this Division, including the keeping of such books, by a holder of a capital markets services licence, in such form and manner as the Authority may prescribe.

Penalties under this Division

103. A holder of a capital markets services licence which, without reasonable justification or excuse, contravenes section 102 (1), (3) or (4) or any regulation made under section 102 (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

*Division 2 — Customer Assets***Handling of customer assets**

104.—(1) A holder of a capital markets services licence shall, to the extent that it receives money or other assets from a customer —

- (a) do so on the basis that the money or other assets shall be applied solely for such purpose as may be agreed to by the customer, when or before it receives the money or other assets;
- (b) pending such application, pay or deposit the money or other assets in such manner as may be prescribed; and
- (c) record and maintain a separate book entry for each customer in accordance with the provisions of this Act in relation to that customer's money or other assets.

(2) The Authority may, without prejudice to section 341, make regulations in respect of all or any of the matters in this Division, including the handling of money or other assets by a holder of a capital markets services licence.

(3) In this section, “money or other assets” means money received or retained by, or any other asset deposited with, a holder of a capital markets services licence in the course of its business for which it is liable to account to its customer, and any money or other assets accruing therefrom.

Penalties under this Division

105. Any holder of a capital markets services licence which, without reasonable justification or excuse, contravenes section 104 (1) or any regulation made under section 104 (2), shall be guilty of an offence and shall be liable on conviction —

- (a) where it is found to have committed the offence with intent to defraud, to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Division 3 — Audit

Appointment of auditors

106. A holder of a capital markets services licence shall appoint an auditor to audit its accounts and where, for any reason, the auditor ceases to act for such holder, the holder shall, as soon as practicable thereafter, appoint another auditor.

Lodgment of annual accounts, etc.

107.—(1) A holder of a capital markets services licence shall, in respect of each financial year —

- (a) prepare a true and fair profit and loss account and a balance-sheet made up to the last day of the financial year; and
- (b) lodge the account and balance-sheet with the Authority within 5 months, or such extension thereof permitted by the Authority under subsection (2), after the end of the financial year, together with an auditor's report on the account and balance-sheet.

(2) Where an application for an extension of the period of 5 months specified in subsection (1) has been made by a holder of a capital markets services licence to the Authority and the Authority is satisfied that there is any special reason for requiring the extension, the Authority may extend that period by not more than 4 months, subject to such conditions or restrictions as the Authority may think fit to impose.

(3) Any holder of a capital markets services licence which contravenes subsection (1), shall be guilty of an offence and shall be

liable on conviction to a fine not exceeding \$500 for every day or part thereof that the lodgment is late, subject to a maximum fine of \$50,000.

(4) Any holder of a capital markets services licence which contravenes any condition imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

(5) Notwithstanding any other provision of this Act or any other written law, the Authority may, if it is not satisfied with the performance of duties by an auditor appointed by a holder of a capital markets services licence —

- (a) at any time direct the holder to remove the auditor; and
- (b) direct the holder, as soon as practicable thereafter, to appoint another auditor,

and the holder shall comply with such direction.

Reports by auditor to Authority in certain cases

108. Where, in the performance of his duties as an auditor for a holder of a capital markets services licence, an auditor becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the holder to a material extent;
- (b) any matter which, in his opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts, including any irregularity that may affect or jeopardise the money or other assets of any customer of the holder,

the auditor shall immediately thereafter send —

- (i) a report in writing of the matter or irregularity to the Authority; and
- (ii) where the holder is a member of a securities exchange or futures exchange, a copy of the report to the securities exchange or futures exchange, as the case may be.

Power of Authority to appoint auditor

109.—(1) Where —

- (a) a holder of a capital markets services licence fails to lodge an auditor's report under section 107; or
- (b) the Authority receives a report under section 108,

the Authority may, without prejudice to its powers under section 115, if it is satisfied that it is in the interests of the holder, the customers of the holder or the general public to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the holder.

(2) Where the Authority is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Authority under subsection (1) should be borne by the holder of a capital markets services licence, the Authority may, in writing, direct the holder to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a holder of a capital markets services licence fails to comply with a direction under subsection (2), the amount specified in the direction may be sued for and recovered by the Authority as a civil debt.

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

Power of auditors appointed by Authority

110.—(1) An auditor appointed by the Authority under section 109 may, for the purpose of carrying out an examination and audit of the books of a holder of a capital markets services licence —

- (a) examine, on oath or affirmation, any officer, employee or agent of the holder or any other auditor appointed under this Act in relation to those books;
- (b) require any officer, employee or agent of the holder, or any other auditor appointed under this Act, to produce any of the books held by or on behalf of the holder relating to its business, and to make copies of or take extracts from, or retain possession of, such books for such period as is necessary to enable them to be inspected;

- (c) require a securities exchange, futures exchange or clearing house to produce any of the books kept by it, or any information in its possession, relating to the business of the holder;
- (d) employ such persons as he considers necessary to assist him in carrying out the examination and audit; and
- (e) authorise in writing any person employed by him to do, in relation to the examination and audit, any act or thing that he could do as an auditor under this subsection, other than the examination of any person on oath or affirmation.

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an auditor appointed under section 109 or a person authorised under subsection (1) (e), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

Offence to destroy, alter, etc., records

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

- (a) destroys, conceals or alters any book relating to the business of a holder of a capital markets services licence; or
- (b) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging to, in the possession of or under the control of a holder of a capital markets services licence,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

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

- (a) destroyed, concealed or altered any book referred to in subsection (1) (a); or
- (b) sent, or conspired to send, out of Singapore, any such book or any other asset referred to in subsection (1) (b),

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

Safeguarding of records

112.—(1) A holder of a capital markets services licence shall take reasonable precautions —

- (a) to prevent falsification of the books required to be kept by it under this Act; and
- (b) to facilitate the discovery of any falsification of any such book.

(2) Any holder of a capital markets services licence which contravenes subsection (1) shall be guilty of an offence under this Act.

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

113. Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 109 or carrying out any duty imposed under section 115, and any employee of such an auditor, shall not disclose any information which may come to his knowledge or possession in the course of performing his duties as such auditor or employee, as the case may be, to any person other than —

- (a) the Authority; and
- (b) in the case of an employee of such auditor, the auditor.

Exchanges, etc., may impose additional obligations on members

114. Nothing in this Division shall prevent a securities exchange, futures exchange or clearing house from imposing on its members any additional obligation or requirement which it thinks is necessary with respect to —

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

Additional powers of Authority in respect of auditors

115.—(1) The Authority may impose all or any of the following duties on an auditor of a holder of a capital markets services licence:

- (a) a duty to submit to the Authority such additional information in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge or extend the scope of his audit of the business and affairs of the holder;
- (c) a duty to carry out any other examination or establish any procedure in any particular case;
- (d) a duty to submit a report to the Authority on any of the matters referred to in paragraphs (b) and (c),

and the auditor shall carry out such additional duty or duties.

(2) A holder of a capital markets services licence shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Authority may impose under subsection (1).

Defamation

116.—(1) No auditor or employee of such auditor shall, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of —

- (a) any statement made orally or in writing in the discharge of his duties under this Part; or
- (b) the sending of any report to the Authority under section 108, 109 or 115.

(2) Subsection (1) shall not restrict or otherwise affect any right, privilege or immunity that, apart from this section, the auditor or his employee has as a defendant in an action for defamation.

PART VI**CONDUCT OF BUSINESS***Division 1 — General***Certain representations prohibited**

117.—(1) The holder of a capital markets services licence shall not represent or imply or knowingly permit to be represented or

implied in any manner to any person that the holder's abilities or qualifications have in any respect been approved by the Authority.

(2) A statement that a person is holding a capital markets services licence to carry on business in any regulated activity is not a contravention of this section.

Issue of contract notes

118. The holder of a capital markets services licence to deal in securities, trade in futures contracts or carry out leveraged foreign exchange trading shall, in respect of a sale or purchase of securities or futures contracts or a transaction connected with leveraged foreign exchange trading, after entering into the transaction —

- (a) give to the other party to the transaction a contract note which contains such information as may be prescribed; or
- (b) procure that such a contract note be given in its name.

Dealings by officers or employees of licensed persons

119.—(1) The holder of a capital markets services licence shall not give any unsecured advance, unsecured loan or unsecured credit facility to any of its officers or employees or to a person who, to its knowledge, is a person associated with or connected to any of its officers or employees, if —

- (a) the unsecured advance, unsecured loan or unsecured credit facility is given for the purpose of enabling or assisting the person to whom the credit is given to purchase, subscribe for or trade in any capital markets products; or
- (b) the holder knows or has reason to believe that the unsecured advance, unsecured loan or unsecured credit facility will be used for the purpose of purchasing, subscribing for or trading in any capital markets products.

(2) Subsection (1) is without prejudice to section 162 of the Companies Act (Cap. 50).

Certain persons to disclose certain interests

120.—(1) Where the holder of a capital markets services licence, or a representative of such a holder, sends a circular or other similar written communication in which the holder or representative made a recommendation, whether expressly or by implication, with respect

to any securities, the holder or representative shall include in the circular or other written communication, in type not less legible than that used in the remainder of the circular or other written communication, a concise statement of the nature of any interest in, or any interest in the acquisition or disposal of, those securities that he or a person associated with or connected to him has at the date on which the circular or other written communication is sent.

(2) It is a defence to a prosecution for failing to comply with subsection (1) if the defendant proves that, at the time at which the circular or other written communication was sent, he was not aware and could not reasonably be expected to have been aware that —

- (a) he had an interest in, or an interest in the acquisition or disposal of, those securities; or
- (b) the person associated with or connected to him had an interest in, or an interest in the acquisition or disposal of, those securities,

as the case may be.

(3) For the purposes of subsections (1) and (2) —

- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will or is likely to, accrue, directly or indirectly, to the person upon, or arising out of, the disposal of the securities; and
- (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities.

(4) For the purposes of subsections (1) and (2) and notwithstanding sections 2 and 3, a person is not associated with or connected to another person unless the person and the other person are acting jointly, or otherwise acting under or in accordance with an arrangement made between them, in relation to the sending of the circular or other written communication or the making of the recommendation.

(5) Where —

- (a) a person has subscribed for or purchased securities for the purpose of offering all or any of them to the public for purchase; and
- (b) the person offers any of those securities for purchase,

the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(6) Where —

- (a) securities have been offered for subscription or purchase; and
- (b) a person has subscribed for or purchased, or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased,

the person shall not, during the period of 90 days after the close of the offer —

- (i) make an offer to sell those securities otherwise than in the ordinary course of trading on a securities exchange or recognised trading system provider; or
- (ii) make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to those securities,

unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will or may be required to acquire, under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(7) The holder of a capital markets services licence, or a representative of such a holder, shall not send to a person a circular or other written communication, written offer or written recommendation to which subsection (1), (5) or (6) applies unless the circular or other communication, offer or recommendation is signed —

- (a) in the case of the holder of a capital markets services licence — by an officer of the holder; or
- (b) in the case of the representative — by the representative.

(8) When the holder of a capital markets services licence, or a representative of such a holder, sends to a person a circular or other written communication, written offer or written recommendation to

which subsection (1), (5) or (6) applies, the holder or representative shall preserve a copy of the circular or other written communication, offer or recommendation duly signed in accordance with subsection (7) for 7 years.

(9) For the purpose of this section, any reference to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(10) For the purposes of this section, a circular or other written communication, written offer or written recommendation sent to a person shall, if it is signed by an officer of a corporation, be deemed to have been sent by the corporation.

(11) The Authority may, if it is in the public interest, exempt a person or class of persons, or securities or class of securities from the application of this section.

(12) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

Recommendations by certain persons

121.—(1) The holder of a capital markets services licence, or a representative of such a holder, shall not make a recommendation with respect to any capital markets products to a person who may reasonably be expected to rely on the recommendation if the holder or representative does not have a reasonable basis for making the recommendation to the person.

(2) For the purposes of subsection (1), the holder of a capital markets services licence, or a representative of such a holder, does not have a reasonable basis for making a recommendation to a person unless —

- (a) the holder or representative has, for the purposes of ascertaining that the recommendation is appropriate having regard to the information possessed by the holder or representative concerning the investment objectives, financial situation and particular needs of the person, given such consideration to, and conducted such investigation of,

the subject-matter of the recommendation as is reasonable in all the circumstances; and

(b) the recommendation is based on that consideration and investigation.

(3) The holder of a capital markets services licence, or a representative of such a holder, who contravenes subsection (1) shall not be guilty of an offence under subsection (1) or under section 335.

(4) Where —

(a) the holder of a capital markets services licence, or a representative of such a holder, contravenes subsection (1) by making a recommendation to a person;

(b) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act;

(c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may be, in reliance on the recommendation; and

(d) the person suffers loss or damage as a result of doing that act or refraining from doing that act, as the case may be,

the holder or representative is liable to pay damages to that person in respect of that loss or damage.

(5) Subsection (4) is in addition to and not in derogation of any other remedies available to the person referred to in that subsection.

(6) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation whether orally or in writing and whether expressly or by implication.

Priority to customers' orders

122.—(1) Except as permitted by subsection (2) —

(a) the holder of a capital markets services licence to deal in securities or trade in futures contracts when acting as principal or on behalf of a person associated with or connected to the holder; or

(b) a representative of such a holder when acting for his own account or on behalf of a person associated with or connected to the representative,

shall not enter into a transaction for the purchase or sale of securities or futures contracts that are permitted to be traded on the securities market of a securities exchange, the futures market of a futures exchange or the securities market or the futures market of a recognised trading system provider, as the case may be, if a customer of that holder or representative, who is not associated with or connected to the holder or representative, has instructed the holder or representative to purchase or sell, respectively, securities or futures contracts of the same class and he has not complied with the instruction.

(2) Subsection (1) shall not apply to the entering into of a transaction by the holder of a capital markets services licence to deal in securities or trade in futures contracts as principal or on behalf of a person associated with or connected to the holder, or by a representative of such a holder for his own account or on behalf of a person associated with or connected to the representative, if —

- (a) his customer required the purchase or sale of securities or futures contracts on behalf of the customer to be effected only on specified conditions and he has been unable to purchase or sell the securities or futures contracts by reason of those conditions; or
- (b) the transaction is entered into in prescribed circumstances.

(3) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

Power of Authority to make regulations

123.—(1) The Authority may make regulations in respect of the conduct of business in any regulated activity by the holder of a capital markets services licence or a representative of such a holder.

(2) Without affecting the generality of subsection (1), regulations made under this section may —

- (a) specify requirements applicable to the holder of a capital markets services licence in relation to securities financing;
- (b) prohibit the use of misleading or deceptive advertisements by or on behalf of the holder of a capital markets services licence, and impose conditions or restrictions for the use of advertisements by or on behalf of the holder;

- (c) specify terms and conditions to be included in customer contracts and provide that the terms and conditions are, unless the Authority in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the customer contracts in which they are included, whether or not a different intention appears in the provisions of the customer contracts;
- (d) specify information that the holder of a capital markets services licence is to provide to its customer on entering into a customer contract with the customer, and thereafter from time to time on request by the customer, concerning the business of the holder and the identity and status of any person acting on behalf of the holder with whom the customer may have contact;
- (e) require the holder of a capital markets services licence, and a representative of such a holder, to ascertain, in relation to each customer of the holder, specified matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided by the holder, and specify the steps to be taken for this purpose;
- (f) require the holder of a capital markets services licence, and a representative of such a holder, when providing information or advice concerning capital markets products to a customer of the holder, to ensure the suitability of the information or advice to be provided to the customer, and specify the steps to be taken for this purpose;
- (g) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder the financial risks in relation to capital markets products that the holder or the representative recommends to the customer, and specify the steps to be taken for this purpose;
- (h) require the holder of a capital markets services licence, and a representative of such a holder, to disclose to a customer of the holder any commission or advantage the holder or the representative, as the case may be, receives or is to receive from a third party in connection with any capital markets products which the holder or the representative

recommends to the customer, and specify the steps to be taken for this purpose;

- (i) prohibit the holder of a capital markets services licence and a representative of such a holder from effecting a transaction on behalf of a customer of the holder except in specified circumstances;
- (j) specify the circumstances in which, and the conditions under which, the holder of a capital markets services licence, and a representative of such a holder, may use information relating to the affairs of the customer of the holder;
- (k) require the holder of a capital markets services licence, and a representative of such a holder, to take steps to avoid cases of conflict between any of their interests and those of a customer of the holder, and specify the steps to be taken in the event of a potential or actual case of conflict;
- (l) specify the circumstances in which the holder of a capital markets services licence may receive any property or service from another holder of a capital markets services licence in consideration of directing business to that other holder;
- (m) specify the circumstances in which, and the conditions and restrictions under which, a representative of the holder of a capital markets services licence is permitted to deal or trade for his own account in securities or futures contracts;
- (n) provide for any other matter relating to the practices and standards of conduct of the holder of a capital markets services licence and a representative of such a holder in carrying on business in any regulated activity; and
- (o) provide that, subject to such conditions or restrictions as may be prescribed, all or specified provisions of this Part shall not apply to a specified class of holders of a capital markets services licences or their representatives, or to a specified class of capital markets products.

(3) Regulations made under this section may provide that any customer contract entered into by the holder of a capital markets services licence with its customer otherwise than in compliance with any specified regulation is, notwithstanding anything in the contract, unenforceable at the option of the customer.

(4) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$100,000.

(5) In this section, “customer contract” means any contract or arrangement between the holder of a capital markets services licence and a customer of the holder which contains terms on which the holder is to provide services to, or effect transactions for, the customer.

Penalties under this Division

124. Any person who, without reasonable justification or excuse, contravenes any of the provisions of this Division (except section 121), shall be guilty of an offence and shall be liable on conviction, where no penalty is expressly provided, to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.

Division 2 — Securities

Dealings as principal

125.—(1) Subject to subsection (4), the holder of a capital markets services licence to deal in securities shall not, as principal, deal in any securities with a person which is not the holder of a capital markets services licence to deal in securities unless the holder first informs the person that the holder is acting in the transaction as principal and not as agent.

(2) The holder of a capital markets services licence to deal in securities who enters into a transaction of sale or purchase of securities as a principal with a person who is not the holder of a capital markets services licence to deal in securities shall state in the contract note that the holder is acting in the transaction as principal and not as agent.

(3) For the purposes of this section, a reference to the holder of a capital markets services licence to deal in securities dealing or entering into a transaction as principal includes a reference to the holder —

- (a) dealing or entering into a transaction on behalf of a person associated with or connected to the holder;

- (b) dealing in securities on behalf of a corporation in which the holder has a controlling interest; or
- (c) dealing on behalf of a corporation in which the holder's interest and the interests of the directors of the holder together constitute a controlling interest.

(4) Subsection (1) shall not apply to a transaction of sale or purchase of an odd lot of securities that is entered into by the holder of a capital markets services licence to deal in securities which is a member of a securities exchange or recognised trading system provider and specialises in transactions relating to odd lots of securities.

(5) Where the holder of a capital markets services licence to deal in securities fails to comply with subsection (1) or (2) in respect of a contract for the sale of securities by the holder, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission given in writing to the holder not later than 30 days after the receipt of the contract note.

(6) Where the holder of a capital markets services licence fails to comply with subsection (1) or (2) in respect of a contract for the purchase of securities by the holder, the vendor of the securities may, in like manner, rescind the contract.

(7) Nothing in subsection (5) or (6) shall affect any right that a person has apart from those subsections.

(8) Any person who contravenes any of the provisions of this section 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.

*Division 3 — Futures Contracts and
Leveraged Foreign Exchange Trading*

Trading against customer

126. The holder of a capital markets services licence to trade in futures contracts shall not knowingly enter into a transaction to buy from or sell to its customer any futures contract for the holder's own account, an account of a person associated with or connected to it or for an account in which the holder has an interest, except with the customer's prior consent and in accordance with the business rules

and practices of a futures exchange or recognised trading system provider.

Cross-trading

127. The holder of a capital markets services licence to trade in futures contracts shall not knowingly fill or execute a customer's order for the purchase or sale of a futures contract on a futures market by off-setting against the order or orders of any other person, without effecting such a purchase or sale either —

- (a) on the trading floor or electronic futures trading system; or
- (b) in accordance with the business rules and practices of a futures exchange or recognised trading system provider.

Risk disclosure by certain persons

128.—(1) The holder of a capital markets services licence to trade in futures contracts or carry out leveraged foreign exchange trading shall not open a futures trading account or leveraged foreign exchange trading account for a customer unless he —

- (a) furnishes the customer with a separate written risk disclosure document which shall be in such form and contain such information as the Authority may prescribe; and
- (b) receives from the customer an acknowledgment signed and dated by the customer that he has received and understood the nature and contents of the risk disclosure document.

(2) The holder of a capital markets services licence for fund management shall not solicit or enter into an agreement with a prospective customer for the purpose of —

- (a) managing the customer's futures trading account or foreign exchange trading account; or
- (b) guiding the customer's futures trading account or foreign exchange trading account,

by means of a systematic programme that recommends specific transactions unless, at or before the time the holder engages in the solicitation or enters into the agreement (whichever is the earlier), the holder —

- (i) delivers or causes to be delivered to the prospective customer a risk disclosure document in respect of that

purpose which shall be in such form and contain such information as the Authority may prescribe; and

- (ii) receives from the prospective customer an acknowledgment signed and dated by him that he has received and understood the nature and contents of the risk disclosure document.

(3) Subsection (2) shall not apply to collective investment schemes that are approved under Division 2 of Part XIII.

Penalties under this Division

129. Any person who contravenes any provision of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

PART VII

DISCLOSURE OF INTERESTS

Division 1 — Registers of Interests in Securities

Application of this Division

130.—(1) This Division shall apply to a person who is —

- (a) a holder of a capital markets services licence to deal in securities and a representative of such a holder;
- (b) a holder of a capital markets services licence to advise on corporate finance and a representative of such a holder; or
- (c) a holder of a capital markets services licence for fund management and a representative of such a holder.

(2) In this Division, a reference to securities is a reference to securities which are listed for quotation, or quoted, on a securities exchange or recognised trading system provider.

Register of securities

131.—(1) A person to whom this Division applies shall —

- (a) maintain in the prescribed form a register of his interests in securities;

(b) enter in the register, within 7 days after the date that he acquires any interest in securities, particulars of the securities in which he has an interest and particulars of his interest in those securities; and

(c) retain that entry in an easily accessible form for a period of not less than 6 years after the date on which such entry is first made.

(2) Where there is a change (not being a prescribed change) in any interest in securities of a person to whom this Division applies, he shall —

(a) enter in the register particulars of the change including the date of the change and the circumstances by reason of which the change has occurred; and

(b) retain that entry in an easily accessible form for a period of not less than 6 years after the date on which such entry is first made.

Notice of particulars to Authority

132.—(1) A person to whom this Division applies shall give notice to the Authority in the prescribed form containing such particulars as may be prescribed, including the place at which he will keep the register of his interests in securities or, if the register is in electronic form, the place at which full access to the register may be gained.

(2) The notice shall be given by the person to whom this Division applies as part of his application for a licence under this Act.

(3) A person who ceases to be a person to whom this Division applies shall, within 14 days of his so ceasing, notify the Authority.

(4) A person who fails or neglects to give a notice required under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

Place at which register is kept

133.—(1) A person to whom this Division applies shall keep the register of his interests in securities —

(a) in the case of an individual, at his principal place of business;
or

(b) in the case of a corporation, at any of its places of business.

(2) Where a register of interests in securities is kept in electronic form, a person shall be deemed to be in compliance with subsection (1) if he ensures that full access to such register may be gained by the Authority at the place referred to in subsection (1) (a) or (b), as the case may be.

Defence to prosecution

134.—(1) Where a person is charged with an offence in respect of a contravention of section 131 or 132, it shall be a defence for the person to prove —

(a) that his contravention was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence; and

(b) that —

(i) he was not so aware on the date of the summons; or

(ii) he became so aware before the date of the summons and complied with the relevant section within 14 days after becoming so aware.

(2) For the purposes of subsection (1), a person shall, in the absence of proof to the contrary, be conclusively presumed to have been aware of a fact or occurrence at a particular time of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his employer's or principal's interest or interests in the securities concerned, was aware at that time.

Production of register

135.—(1) The Authority may require any person to whom this Division applies to produce for inspection the register of his interests in securities, and the Authority may make a copy of, or extracts from, the register.

(2) Any person who fails —

(a) to produce the register of his interests in securities for inspection by the Authority; or

(b) to allow the Authority to make a copy of, or extracts from, the register,

shall be guilty of an offence.

Extract of register

136. The Authority may supply a copy of the extract of a register obtained under section 135 to any person who, in the opinion of the Authority, should in the public interest be informed of the dealing in securities disclosed in the register.

*Division 2 — Disclosure by Substantial Shareholders***Duty of substantial shareholders to notify securities exchange**

137.—(1) In the case of a company all or any of whose shares are listed for quotation on the official list of a securities exchange, Division 4 of Part IV of the Companies Act (Cap. 50) (other than sections 86, 87, 88, 89 and 92) shall apply, with such modifications and qualifications as may be necessary, to a person who is a substantial shareholder as though references to the company to which notification should be given were references to the securities exchange, and such person shall comply with those provisions accordingly.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.

PART VIII**SECURITIES INDUSTRY COUNCIL
AND TAKE-OVER OFFERS****Securities Industry Council**

138.—(1) The advisory body known as the Securities Industry Council referred to in section 14 of the repealed Securities Industry Act (Cap. 289) shall continue in existence as if it had been established under this Act.

(2) The function of the Securities Industry Council shall, in addition to the functions conferred upon it under this Part, be to advise the Minister on all matters relating to the securities industry.

(3) The Securities Industry Council shall consist of such representatives of business, the Government and the Authority as the

Minister may appoint and those representatives shall serve for such period or periods as the Minister may determine.

(4) The Securities Industry Council shall have the power, in the exercise of its functions, to enquire into any matter or thing related to the securities industry and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the enquiry.

(5) Nothing in subsection (4) shall compel the production by an advocate and solicitor of a document containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document which is in his possession; but if the advocate and solicitor refuses to produce the document he shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom or by or on behalf of whom the communication was made.

(6) The Authority may consult the Securities Industry Council for the proper and effective implementation of this Act.

(7) For the purposes of this Act, every member of the Securities Industry Council —

- (a) shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224); and
- (b) shall have, in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act, the like protection and privileges as are by law given to a Judge in the execution of his office.

(8) The Securities Industry Council shall in the exercise of its functions have regard to the interest of the public, the protection of investors and the safeguarding of sources of information.

(9) Subject to the provisions of this Act, the Securities Industry Council may regulate its own procedure and shall not be bound by the rules of evidence.

Take-over Code

139.—(1) This section and section 140 shall apply to and in relation to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all corporations or bodies

unincorporate, whether incorporated or carrying on business in Singapore or not, and shall extend to acts done outside Singapore.

(2) For the more effective administration, supervision and control of take-over offers and matters connected therewith, the Authority shall, on the advice of the Securities Industry Council and under section 321, issue a code known as the Singapore Code on Take-overs and Mergers (referred to in this Act as the Take-over Code).

(3) For the avoidance of doubt, the Take-over Code shall be deemed not to be subsidiary legislation.

(4) The Take-over Code shall apply to a take-over offer and to matters connected therewith, and all parties concerned in a take-over offer or a matter connected therewith shall comply with its provisions.

(5) The Take-over Code shall be administered and enforced by the Securities Industry Council.

(6) The Authority may, on the advice of the Securities Industry Council, revise the Take-over Code by deleting, amending or adding to the provisions thereof.

(7) The Securities Industry Council may issue rulings on the interpretation of the general principles and rules in the Take-over Code and lay down the practice to be followed by parties concerned in a take-over offer or a matter connected therewith, and such rulings or practice shall be final.

(8) A failure of any party concerned in a take-over offer or a matter connected therewith to observe any of the provisions of the Take-over Code shall not of itself render that party liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(9) Nothing in subsection (8) shall be construed as preventing the Securities Industry Council from invoking such sanctions (including public censure) as it may decide in relation to breaches of the Take-over Code by any party concerned in a take-over offer or a matter connected therewith.

(10) Where the Securities Industry Council has reason to believe that any party concerned in a take-over offer or a matter connected

therewith, or any person advising on a take-over offer or a matter connected therewith, is in breach of the provisions of the Take-over Code or is otherwise believed to have committed acts of misconduct in relation to such take-over offer or matter, the Securities Industry Council shall have power to enquire into the suspected breach or misconduct.

(11) For the purpose of subsection (10), the Securities Industry Council may summon any person to give evidence on oath or affirmation, which it is hereby authorised to administer, or produce any document or material necessary for the purpose of the enquiry.

Offences relating to take-over offers

140.—(1) A person who has no intention to make an offer in the nature of a take-over offer shall not give notice or publicly announce that he intends to make a take-over offer.

(2) A person shall not make a take-over offer or give notice or publicly announce that he intends to make a take-over offer if he has no reasonable or probable grounds for believing that he will be able to perform his obligations if the take-over offer is accepted or approved, as the case may be.

(3) Where a person contravenes subsection (1) or (2), the person and, where the person is a corporation, every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

PART IX

SUPERVISION AND INVESTIGATION

Division 1 — Supervisory Powers of Authority

Subdivision (1) — Powers of Authority to require disclosure of information about securities and futures contracts

Interpretation of this Subdivision

141. In this Subdivision, a reference to disclosing information includes, in relation to information that is contained in a document, a reference to producing the document.

Acquisition and disposal of securities or futures contracts, etc.

142.—(1) The Authority may, where it considers it necessary for the protection of investors, require the holder of a capital markets services licence to deal in securities or trade in futures contracts, or an exempt person carrying on business in any of those activities, to disclose to the Authority, in relation to any acquisition or disposal of securities or futures contracts —

(a) the name of the person from or through whom or on whose behalf the securities or futures contracts were acquired; or

(b) the name of the person to or through whom or on whose behalf the securities or futures contracts were disposed of,

and the nature of the instructions given to the holder or exempt person in respect of the acquisition or disposal.

(2) The Authority may require a person who has acquired, held or disposed of securities or futures contracts to disclose to the Authority whether he acquired, held or disposed of those securities or futures contracts, as the case may be, as trustee for, or on behalf of, another person (whether or not as a nominee), and if so —

(a) the name of that other person; and

(b) the nature of any instructions given to the first-mentioned person in respect of the acquisition, holding or disposal.

(3) The Authority may require a securities exchange or futures exchange to disclose to the Authority, in relation to an acquisition or disposal of securities on the securities market of that securities exchange or futures contracts on the futures market of that futures exchange, the names of the members of that securities exchange or futures exchange who acted in the acquisition or disposal.

(4) The Authority may require a clearing house for a securities market or futures market to disclose to the Authority, in relation to any dealing in securities on that securities market or trading in futures contracts on that futures market, the names of the members of the clearing house who were concerned in any act or omission in relation to the dealing or trading.

Exercise of certain powers in relation to securities

143.—(1) This section shall apply where the Authority considers that —

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- (a) it may be necessary to prohibit dealing in securities of, or made available by, a corporation under section 23;
 - (b) a person may have contravened any of the provisions of Part XII in relation to securities of, or made available by, a corporation; or
 - (c) a person may have contravened any of the provisions of Division 4 of Part IV of the Companies Act (Cap. 50) or Division 2 of Part VII in relation to securities in a corporation.

(2) The Authority may require an officer of a corporation referred to in subsection (1) to disclose to the Authority any information of which he is aware and which may have affected any dealing that has taken place, or which may affect any dealing that may take place, in securities of, or made available by, the corporation.

(3) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

- (a) any dealing in securities of, or made available by, a corporation referred to in subsection (1);
- (b) any advice given, or any report or analysis issued or published concerning such securities, by the holder of a capital markets services licence to deal in securities, or a representative of such a holder;
- (c) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital markets services licence to deal in securities and who has dealt in or given advice or issued or published a report or an analysis concerning such securities;
- (d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is a person referred to in that paragraph; or
- (e) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to deal in securities, being a book relating to dealings in such securities,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

Exercise of certain powers in relation to futures contracts

144.—(1) This section shall apply where the Authority considers that —

- (a) it may be necessary to give a direction or take any action in relation to any trading in futures contracts under section 24; or
- (b) a person may have contravened any of the provisions of Part XII in relation to futures contracts.

(2) Where the Authority believes on reasonable grounds that a person is capable of giving information concerning any of the following matters:

- (a) any trading in futures contracts;
- (b) any advice given, or any report or analysis issued or published concerning such futures contracts, by the holder of a capital markets services licence to trade in futures contracts, or a representative of such a holder;
- (c) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) the holder of a capital markets services licence to trade in futures contracts and has traded in or given advice or issued or published a report or an analysis concerning such futures contracts;
- (d) the financial position of any business carried on by a nominee controlled by a person referred to in paragraph (c) or jointly controlled by 2 or more persons, at least one of whom is a person referred to in that paragraph; or
- (e) an audit of, or any report of an auditor concerning, any book of the holder of a capital markets services licence to trade in futures contracts, being a book relating to trading in such futures contracts,

the Authority may require the person to disclose to the Authority the information that the person has about that matter.

Self-incrimination

145. A person is not excused from disclosing information to the Authority pursuant to a requirement made of him under section 142, 143 or 144 on the ground that the disclosure of the information might

tend to incriminate him but, where the person claims, before making the statement, that the statement might tend to incriminate him, that statement —

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under section 148; but
- (b) shall be admissible in evidence for civil proceedings under Part XII.

Savings for advocates and solicitors

146.—(1) Nothing in this Subdivision shall compel the disclosure by an advocate and solicitor of, or of a document or other material containing, a privileged communication made by or to him in that capacity.

(2) If an advocate and solicitor refuses to disclose the information or produce the document or other material, he shall nevertheless be obliged to give the name and address of the person (if he knows them) to whom or by or on behalf of whom that communication was made.

Immunities

147.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 148, shall lie against any person for disclosing any information to the Authority if he had done so in good faith in compliance with a requirement of the Authority under section 142, 143 or 144.

(2) Any person who complies with a requirement of the Authority under section 142, 143 or 144 shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

Offences

148.—(1) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Authority under section 142, 143 or 144 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(2) A person who, in purported compliance with a requirement of the Authority under section 142, 143 or 144, discloses information, or makes a statement, that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

Copies or extracts of documents to be admitted in evidence

149.—(1) Subject to this section, a copy of or extract from a document produced under this Subdivision that is proved to be a true copy of the document or of the relevant part of the document is admissible in evidence as if it were the original document or the relevant part of the original document.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a document is a true copy of the document or of a part of the document may be given by a person who has compared the copy or extract with the document or the relevant part of the document and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Subdivision (2) — Inspection Powers of Authority

Inspection by Authority

150.—(1) The Authority may inspect under conditions of secrecy, the books of an exchange holding company, a securities exchange, a futures exchange, a recognised trading system provider, a person operating an exempt market, a person granted an exemption under section 5 (3) or 6 (3), a clearing house, a person operating an exempt clearing facility, the holder of a capital markets services licence, an exempt person or a representative.

(2) For the purpose of an inspection under this section —

(a) a person referred to in subsection (1) or any person in possession of the books, shall produce the books and shall

give such information and facilities as may be required by the Authority; and

(b) a person referred to in subsection (1) shall procure that any other person who is in possession of such books produce such books and give such information and facilities as may be required by the Authority.

(3) The Authority may —

(a) make copies of, or take possession of, any of the books;

(b) use, or permit the use of, any of the books for the purposes of any proceedings under this Act; and

(c) retain possession of any of the books for so long as is necessary —

(i) for the purposes of exercising a power conferred by this section (other than subsection (5));

(ii) for a decision to be made about whether or not any proceedings under this Act to which the books concerned would be relevant should be instituted; or

(iii) for such proceedings to be instituted and carried on.

(4) No one is entitled as against the Authority to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority, the Authority —

(a) shall permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled to inspect if they were not in the Authority's possession; and

(b) may permit another person to inspect any of the books.

(6) The Authority may require a person who produced any of the books to the Authority to explain to the best of his knowledge and belief any matter about the compilation of the books or to which the books relate.

(7) Any person who fails, without reasonable excuse, to produce any book or give any information or facilities in accordance with subsection (2) or to comply with a requirement of the Authority under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Sections 146 and 147 shall, with the necessary modifications, apply in relation to the production of any book or disclosure of any information to the Authority under this section.

(9) Section 149 shall, with the necessary modifications, apply in relation to a copy or extract from a book inspected under this section.

*Division 2 — Power of Minister to appoint
inspector for investigating dealings
in securities, etc.*

Power of Minister to appoint inspectors

151.—(1) Notwithstanding anything in this Act, the Minister may, if he thinks it in the public interest to do so, appoint any person as an inspector to investigate any matter concerning dealing in securities, trading in futures contracts or leveraged foreign exchange trading.

(2) An inspector appointed under subsection (1) shall have all the powers conferred upon an inspector under Part IX of the Companies Act (Cap. 50) and that Part shall, with the necessary modifications, apply to such investigation.

(3) Any inspector appointed under subsection (1) shall report the results of his investigation to the Minister and the Minister may, if he thinks it in the public interest to do so, cause the report to be printed and published.

Division 3 — Investigative Powers of Authority

Subdivision (1) — General

Investigation by Authority

152.—(1) The Authority may conduct such investigation as it considers necessary or expedient for any of the following purposes:

- (a) to exercise any of its powers or to perform any of its functions and duties under this Act;
- (b) to ensure compliance with this Act or any written direction issued under this Act;
- (c) to investigate an alleged or suspected contravention of any provision of this Act or any written direction issued under this Act.

(2) The Authority may exercise any of its powers under this Division for the purposes of conducting an investigation under subsection (1) notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law.

(3) A requirement imposed by the Authority in the exercise of its powers under this Division shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Any person who complies with a requirement imposed by the Authority in the exercise of its powers under this Division shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, by any rule of law, any contract or any rule of professional conduct.

(5) No civil or criminal action, other than proceedings for an offence under section 162 or 168, shall lie against any person —

- (a) for giving assistance to the Authority, including answering questions, if he had given the assistance or answered the questions in good faith in compliance with a requirement imposed under this Division;
- (b) for providing information or producing books to the Authority if he had provided the information or produced the books in good faith in compliance with a requirement imposed by the Authority under this Division; or
- (c) for doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this Division.

(6) For the purposes of this section, “requirement imposed by the Authority” includes a requirement imposed by an investigator under Subdivision (2).

Self-incrimination and savings for advocates and solicitors

153.—(1) A person is not excused from disclosing information to the Authority or, as the case may be, an investigator under Subdivision (2), pursuant to a requirement made of him under any

provision of this Division on the ground that the disclosure of the information may incriminate him, but where the person claims, before making the statement, that the statement may incriminate him, that statement —

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings under this section; but
- (b) shall, for the avoidance of doubt, be admissible in evidence in civil proceedings under Part XII.

(2) Nothing in this Subdivision shall compel an advocate and solicitor to disclose or produce a privileged communication, or a document or other material containing a privileged communication, made by or to him in that capacity or otherwise the taking of any such document or other material which is in his possession.

(3) If an advocate and solicitor refuses to disclose the information or produce the document or other material, he shall nevertheless be obliged to give the name and address of the person (if he knows them) to whom or by or on behalf of whom that communication was made.

Subdivision (2) — Examination of persons

Requirement to appear for examination

154.—(1) For the purpose of an investigation under this Division, the Authority may, in writing, require a person —

- (a) to give to the Authority all reasonable assistance in connection with the investigation; and
- (b) to appear before an officer of the Authority duly authorised by the Authority for examination on oath and to answer questions.

(2) A requirement in writing imposed under subsection (1) shall state the general nature of the matter referred to in subsection (1).

Proceedings at examination

155. The provisions of this Subdivision shall apply where, pursuant to a requirement made under section 154 for the purposes of an investigation under this Division, a person (referred to in this Subdivision as the examinee) appears before another person (referred to in this Subdivision as the investigator) for examination.

Requirements made of examinee

156.—(1) The investigator may examine the examinee on oath or affirmation and may, for that purpose, administer an oath or affirmation to the examinee.

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make are true.

(3) The investigator may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the Authority is investigating, or is to investigate, under this Division.

Examination to take place in private

157.—(1) The examination shall take place in private and the investigator may give directions as to who may be present during the examination or part thereof.

(2) A person shall not be present at the examination unless he is —

- (a) the investigator or the examinee;
- (b) a person approved by the Authority; or
- (c) entitled to be present by virtue of a direction under subsection (1).

Record of examination

158.—(1) The investigator may, and shall if the examinee so requests, cause a record to be made of statements made at the examination.

(2) If a record made under subsection (1) is in writing or is reduced to writing —

- (a) the investigator may require the examinee to read the record, or to have it read to him, and may require him to sign it; and
- (b) the investigator shall, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions as the investigator may impose.

Giving copies of record to other persons

159.—(1) The Authority may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to an advocate and solicitor acting on behalf of a person who is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination relates.

(2) If the Authority gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a copy of it, shall not, except in connection with preparing, beginning or carrying on, or in the course of, any proceedings —

- (a) use the copy or a copy of it; or
- (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

(3) The Authority may, subject to such conditions or restrictions as it may impose, give to a person a copy of a written record of the examination, or such a copy together with a copy of any related book.

Copies given subject to conditions

160. If a copy of a written record or a book is given to a person under section 158 (2) or 159 (3) subject to conditions or restrictions imposed by the Authority, the person, and any other person who has possession, custody or control of the copy or a copy of it, shall comply with the conditions.

Record to accompany report

161. If —

- (a) in the Authority's opinion, a statement made at an examination is relevant to any other investigation conducted under this Division;
- (b) a record of the statement was made under section 158; and
- (c) a report about the other investigation is prepared under section 151 (3),

a copy of the record shall accompany the report to be submitted to the Minister under section 151 (3).

Offences under this Subdivision

162.—(1) A person who, without reasonable justification or excuse, refuses or fails to comply with section 154 or 156 (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) A person who, without reasonable excuse —

(a) refuses or fails to take an oath or make an affirmation when required to do so by an investigator examining him under this Subdivision;

(b) refuses or fails to comply with a requirement of an investigator under section 158 (2) (a); or

(c) refuses or fails to comply with section 159 (2) or 160,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) A person who, in purported compliance with the provisions of this Subdivision, or in the course of examination of the person, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) It is a defence to a prosecution for an offence under subsection (3) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

(5) A person who, without reasonable justification or excuse, obstructs or hinders the Authority or another person in the exercise of any power under this Subdivision shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

Subdivision (3) — Powers to obtain information

Power of Authority to order production of books

163. For the purpose of an investigation under this Division, the Authority may, in writing, require any person at a specified time

and place to provide information or produce books relating to any matter under investigation, and such person shall comply with that requirement.

Application for warrant to seize books not produced

164.—(1) Where the Authority has reasonable grounds to suspect that there are on any particular premises any books the production of which has been required under section 163, and —

- (a) which have not been produced in compliance with that requirement; or
- (b) which the Authority has reasonable grounds to believe will not be produced in compliance with that requirement,

the Authority may apply to a Magistrate for the issue of a warrant to search the premises for those books.

(2) Whenever it appears to a Magistrate, upon an application under subsection (1), and after such enquiry as he may think necessary, that there are reasonable grounds for suspecting that there are on particular premises any books the production of which have been required under section 163, and —

- (a) which have not been produced in compliance with that requirement; or
- (b) which the Magistrate has reasonable grounds to suspect will not be produced in compliance with that requirement,

the Magistrate may issue a warrant authorising the Authority and any person named therein, with or without assistance —

- (i) to enter and search the premises and to break open and search anything, whether a fixture or not, in the premises; and
- (ii) to take possession of, or secure against interference, any books that appear to be books the production of which was so required.

(3) The powers conferred under subsections (1) and (2) are in addition to, and not in derogation of, any other powers conferred by any other written law or rule of law.

(4) For the purposes of this section, “premises” includes any structure, building, aircraft, vehicle or vessel.

Powers where books are produced or seized

165.—(1) This section shall apply where —

- (a) books are produced to the Authority under a requirement made under section 163;
- (b) under a warrant issued under section 164, the Authority or a person named therein —
 - (i) takes possession of books; or
 - (ii) secures books against interference; or
- (c) by virtue of a previous application of subsection (6), books are delivered into the possession of the Authority or a person authorised by it.

(2) If subsection (1) (a) applies, the Authority may take possession of any of the books.

(3) The Authority or, where applicable, a person referred to in subsection (1) (b) may —

- (a) inspect, and may make copies of, or take extracts from, any of the books;
- (b) use, or permit the use of, any of the books for the purposes of any proceedings; and
- (c) retain possession of any of the books for so long as is necessary —
 - (i) for the purposes of exercising a power conferred by this section (other than subsection (5));
 - (ii) for a decision to be made about whether or not any proceedings to which the books concerned would be relevant should be instituted; or
 - (iii) for such proceedings to be instituted and carried on.

(4) No one is entitled, as against the Authority or, where applicable, a person referred to in subsection (1) (b) to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(5) While the books are in the possession of the Authority or, where applicable, the person referred to in subsection (1) (b), the Authority or person —

- (a) shall permit another person to inspect at all reasonable times such of the books (if any) as the other person would be

entitled to inspect if they were not in possession of the Authority or first-mentioned person; and

(b) may permit another person to inspect any of the books.

(6) Unless subsection (1) (b) (ii) applies, a person referred to in subsection (1) (b) may deliver any of the books into the possession of the Authority or of a person authorised by the Authority to receive them.

(7) Where subsection (1) (a) or (b) applies, the Authority, a person referred to in subsection (1) (b) or a person into whose possession the books are delivered under subsection (6), may require —

(a) if subsection (1) (a) applies, a person who so produced any of the books; or

(b) in any other case, a person who was a party to the compilation of any of the books,

to explain to the best of his knowledge and belief any matter about the compilation of any of the books or to which any of the books relate.

Powers where books not produced

166. Where a person fails to produce particular books in compliance with a requirement made by the Authority under section 163, the Authority may require the person to state, to the best of his knowledge and belief —

(a) the place where the books may be found; and

(b) the person who last had possession, custody or control of the books and the place where that person may be found.

Copies or extracts of books to be admitted in evidence

167.—(1) Subject to this section, a copy of or extract from a book referred to in this Subdivision that is proved to be a true copy of the book or of the relevant part of the book is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) For the purposes of subsection (1), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Offences under this Part

168.—(1) A person who, without reasonable justification or excuse, refuses or fails to comply with any requirement made under section 163, 165 (7) or 166 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) A person who, in purported compliance with a requirement under this Subdivision, furnishes information or makes a statement that is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and not misleading.

(4) A person, who conceals, destroys, mutilates or alters a book relating to a matter that the Authority is investigating or about to investigate under Division 1 or who, where such a book is within the territory of Singapore, takes or sends the book out of Singapore, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) A person who, without reasonable justification or excuse, obstructs or hinders the Authority in the exercise of any power under this Subdivision, or obstructs or hinders a person who is executing a warrant issued under section 164, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) The occupier or the person in charge of the premises that a person enters under a warrant issued under section 164 who fails to provide to the last-mentioned person all reasonable facilities and assistance for the effective exercise of his powers under the warrant shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

PART X
ASSISTANCE TO
FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

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

“enforce” means enforce through criminal, civil or administrative proceedings;

“enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the securities or futures industry of the foreign country of the regulatory authority concerned;

“foreign country” means a country or territory other than Singapore;

“investigation” means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to the securities or futures industry of the foreign country of the regulatory authority concerned;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

“supervision”, in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of —

- (a) a person operating a securities market or futures market, an intermediary or any other person regulated by the regulatory authority; or
- (b) the issuance of or trading in securities, or the trading in futures contracts in the foreign country of the regulatory authority.

Conditions for provision of assistance

170.—(1) The Authority may provide the assistance referred to in section 172 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request by the regulatory authority for assistance is received by the Authority on or after 6th March 2000;
- (b) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out the supervision, investigation or enforcement;
- (c) the contravention of the law or regulatory requirement to which the request relates took place on or after 6th March 2000;
- (d) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;
- (e) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (f)) any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;
- (f) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the Authority;
- (g) the material requested for is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;
- (h) the matter to which the request relates is of sufficient gravity; and
- (i) the rendering of assistance will not be contrary to the public interest or the interest of the investing public.

(2) For the purposes of subsection (1) (e) and (f), “designated third party”, in relation to a foreign country, means —

- (a) any person or body responsible for supervising the regulatory authority in question;
- (b) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or
- (c) any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under this Act.

Other factors to consider for provision of assistance

171. In deciding whether to grant a request for assistance from a regulatory authority of a foreign country referred to in section 172, the Authority may also have regard to the following:

- (a) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act;
- (b) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance; and
- (c) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested for.

Assistance that may be rendered

172.—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a regulatory authority of a foreign country for assistance —

- (a) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;

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- (b) order any person to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;
 - (c) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;
 - (d) order any person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or
 - (e) request any Ministry, Government department or statutory authority to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1) (c) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1) (b), (c) or (d) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

- (4) Nothing in this section shall compel an advocate and solicitor —
- (a) to furnish or transmit any material or copy thereof that contains; or
 - (b) to disclose,

a privileged communication made by or to him in that capacity.

(5) An advocate and solicitor who refuses to furnish or transmit any material or copy thereof that contains, or to disclose, any privileged communication shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) A person shall not be excused from making an oral statement pursuant to an order made under subsection (1) (d) on the ground that the statement might tend to incriminate him but, where the person claims before making the statement that the statement might tend to incriminate him, that statement —

- (a) shall not be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 173; but
- (b) shall be admissible in evidence in civil proceedings under Part XII.

Offences under this Part

173. Any person who —

- (a) without reasonable excuse refuses or fails to comply with an order under section 172 (1) (b), (c) or (d);
- (b) in purported compliance with an order under section 172 (1) (b) or (c), furnishes to the Authority or transmits to a regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or
- (c) in purported compliance with an order made under section 172 (1) (d), makes a statement to the Authority that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Immunities

174.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 173, shall lie against any person for —

- (a) furnishing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if he had furnished or transmitted that material or copy in good faith in compliance with an order made under section 172 (1) (b) or (c);
- (b) making a statement to the Authority in good faith and in compliance with an order made under section 172 (1) (d); or
- (c) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1) (a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by

any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

PART XI

INVESTOR COMPENSATION SCHEME

Interpretation of this Part

175. In this Part, “member”, in relation to a securities exchange or futures exchange, means a person who —

- (a) holds membership of any class or description of a securities exchange or futures exchange, whether or not he holds any share in the share capital of such exchange; and
- (b) is licensed by the Authority to carry on the business of dealing in securities or trading in futures contracts, as the case may be.

Establishment of fidelity fund

176.—(1) Each securities exchange and each futures exchange shall establish, keep and administer a fidelity fund (referred to in this Part as a fidelity fund or fund).

(2) The assets of the fidelity fund of a securities exchange or futures exchange shall —

- (a) be the property of the exchange;
- (b) be kept separate from all other property of the exchange; and
- (c) be held in trust for the purposes set out in this Part.

Moneys constituting fidelity fund

177. The fidelity fund of a securities exchange or futures exchange shall consist of —

- (a) all moneys paid to the exchange by its members in accordance with this Part;
- (b) all moneys paid to the fund by the exchange;
- (c) all interest and profits from time to time accruing from the investment of the fund;
- (d) all moneys recovered by or on behalf of the exchange in the exercise of any right of action conferred by this Part;

- (e) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the exchange under section 194; and
- (f) all other moneys lawfully paid into the fund.

Fund to be kept in separate bank account

178. All moneys forming part of a fidelity fund shall, pending the investment or application thereof in accordance with this Part, be kept in a separate bank account in Singapore.

Payments out of fidelity fund

179. Subject to this Part, there shall be paid out of the fidelity fund of a securities exchange or futures exchange as required and in such order as the exchange considers proper —

- (a) the amount of all claims, including costs, allowed by the exchange or established against the exchange under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the exchange of the rights, powers and authorities vested in it by this Part in relation to the fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the exchange under section 194;
- (d) all expenses incurred or involved in the administration of the fund, including the salaries and wages of persons employed by the exchange in relation thereto; and
- (e) all other moneys payable out of the fund in accordance with this Act.

Accounts of fund

180.—(1) A securities exchange or futures exchange shall establish and keep proper accounts of its fidelity fund and shall, within 5 months from the last day of each financial year of that exchange, cause a balance-sheet in respect of such accounts to be made out as at the last day of that financial year.

(2) The securities exchange or futures exchange shall appoint an auditor to audit the accounts of the fidelity fund.

(3) The auditor appointed by the securities exchange or futures exchange shall —

- (a) regularly and fully audit the accounts of the fidelity fund; and
- (b) audit each balance-sheet and cause it to be laid before the exchange not later than 3 months after the balance-sheet was made out.

Fidelity fund to consist of amount of \$20 million, etc.

181. The fidelity fund of a securities exchange or futures exchange shall consist of an amount of not less than —

- (a) \$20 million; or
- (b) such other amount as the Authority may, by order published in the *Gazette*, specify in substitution of the amount specified under paragraph (a),

to be paid to the credit of the fund on the approval of the exchange under this Act or at any time after its approval as determined by the Authority.

Provisions if fund is reduced below minimum amount

182. If the fidelity fund of a securities exchange or futures exchange is reduced below the minimum amount referred to in section 181, the exchange shall take steps to make up the deficiency —

- (a) by transferring an amount that is equal to the deficiency from other funds of the exchange to the fidelity fund; and
- (b) in the event that there are insufficient funds to transfer under paragraph (a), by requiring each member of the exchange to contribute to the fund such amount as the exchange may determine.

Levy to meet liabilities

183.—(1) If at any time a fidelity fund is not sufficient to satisfy the liabilities that are then ascertained of a securities exchange or futures exchange in relation thereto, the securities exchange or futures exchange —

- (a) may impose on every member a levy of such amount as it thinks fit; or

(b) if ordered by the Authority, shall impose a levy of such amount which shall in the aggregate be equivalent to the amount so specified in the order.

(2) The amount of such levy shall be paid within the time and in the manner specified by the securities exchange or futures exchange either generally or in relation to any particular case.

(3) No member of a securities exchange or futures exchange shall be required to pay by way of levy under this section more than \$300,000 in the aggregate in any particular case.

Power of securities exchange or futures exchange to make advances to fund

184.—(1) A securities exchange or futures exchange may, out of its general funds, give or advance any sum of money to its fidelity fund on such terms as it thinks fit.

(2) Any sum of money advanced by a securities exchange or futures exchange under subsection (1) may be repaid out of the fidelity fund to the general funds of the securities exchange or futures exchange, as the case may be.

Investment of fund

185. Any moneys in a fidelity fund that are not immediately required for any purpose referred to in this Part may be invested by a securities exchange or futures exchange in any manner in which trustees are for the time being authorised by law to invest trust funds.

Application of fund

186.—(1) Subject to this Part, a fidelity fund shall be held and applied for the purpose of compensating any person (other than an accredited investor) who suffers pecuniary loss because of a defalcation committed —

- (a) in the course of, or in connection with, a dealing in securities, or the trading of a futures contract;
- (b) by a member of a securities exchange or futures exchange or by any agent of such member; and
- (c) in relation to any money or other property which, after the establishment of the fidelity fund was entrusted to or received —

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- (i) by that member or by any of its agents for or on behalf of any other person; or
 - (ii) by that member either as the sole trustee or as trustee with any other person or persons, or by any of its agents as trustee or for or on behalf of the trustees of that money or property.

(2) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to the Official Assignee or a trustee in bankruptcy within the meaning of the Bankruptcy Act (Cap. 20) an amount not greater than the amount that the Official Assignee or the trustee in bankruptcy, as the case may be, certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt, who is a member of a securities exchange or futures exchange, are insufficient to satisfy any debts arising from dealings in securities or trading in futures contracts that have been proved in the bankruptcy by creditors of the bankrupt member.

(3) Subsection (2) shall apply in the case of a member of a securities exchange or futures exchange who has made a voluntary arrangement with his creditors under Part V of the Bankruptcy Act in like manner as that subsection applies in the case of a member who has become bankrupt.

(4) For the purposes of subsection (3) —

- (a) a reference to a trustee in bankruptcy in subsection (2) shall be deemed to be a reference to a nominee within the meaning of Part V of the Bankruptcy Act;
- (b) a reference to debts proved in bankruptcy in subsection (2) shall be deemed to be a reference to debts provable in relation to a voluntary arrangement within the meaning of Part V of the Bankruptcy Act; and
- (c) a reference to the bankrupt in subsection (2) shall be deemed to be a reference to the person who made the voluntary arrangement under Part V of the Bankruptcy Act.

(5) Subject to this Part, the fidelity fund shall be applied for the purpose of paying to a liquidator of a member of a securities exchange or futures exchange that is being wound up an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the member are insufficient to satisfy any debts arising from

dealings in securities or trading in futures contracts that have been proved in the liquidation of the member.

(6) Where a claim has been made for compensation in respect of a pecuniary loss under subsection (1), no claim for a payment under subsection (2) or (5) shall be made in respect of the same pecuniary loss.

(7) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (2), no claim for compensation under subsection (1) or for a payment under subsection (5) shall be made in respect of the same deficiency.

(8) Where a claim has been made for a payment in respect of a deficiency referred to in subsection (5), no claim for compensation under subsection (1) or for a payment under subsection (2) shall be made in respect of the same deficiency.

(9) Moneys paid under subsection (2) or (5) may only be applied by the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator, as the case may be, for the purpose of satisfying debts arising from dealings in securities or trading in futures contracts, and for no other purpose.

(10) Subject to the provisions of this section, the amount or the sum of the amounts that may be paid out of the fidelity fund under this Part for the purpose of —

- (a) compensating pecuniary loss under subsection (1); or
- (b) making a payment under subsection (2) or (5),

shall not, in respect of each member, exceed the prescribed amount.

(11) Subject to the provisions of this section —

- (a) the amount that may be paid out of the fidelity fund to each claimant under subsection (1) in relation to each member; or
- (b) the amount that the Official Assignee, a trustee in bankruptcy, a nominee or a liquidator may pay to each creditor of a member from any amount paid to the Official Assignee, trustee in bankruptcy, nominee or liquidator, as the case may be, under subsection (2) or (5),

shall not exceed the prescribed amount.

(12) For the purposes of subsections (10) and (11), any amount paid out of the fidelity fund shall, to the extent to which the fund is subsequently reimbursed therefor, be disregarded.

(13) For the purposes of this section, “agent”, in relation to a member of a securities exchange or futures exchange, means a person who is a director, an officer, an employee or a representative of the member, and includes a person who has been, but at the time of any defalcation in question has ceased to be, a director, an officer, an employee or a representative of the member if, at the time of the defalcation, the person claiming compensation has reasonable grounds for believing that person to be a director, an officer, an employee or a representative of the member.

(14) Nothing in this Part shall be construed as to allow a person to claim compensation against the fidelity fund of a futures exchange if —

- (a) the person has suffered pecuniary loss because of a defalcation committed by a member of the exchange or by any agent of the member; and
- (b) such defalcation is in respect of moneys deposited by that person with the member or moneys belonging to that person held by that member, in connection with the trading of a contract which is not a futures contract that is cleared or to be cleared by a clearing house or a futures exchange in Singapore.

Claims against fund

187.—(1) Subject to this Part, every person who suffers pecuniary loss referred to in section 186 shall be entitled to claim compensation out of the fidelity fund and to take proceedings in the High Court under this Act against a securities exchange or futures exchange to establish such claim.

(2) A person shall not have any claim against the fidelity fund in respect of a defalcation in respect of money or other property which prior to the commission of the defalcation had, in the due course of the administration of a trust, ceased to be under the sole control of the director or directors of the member of a securities exchange or futures exchange.

(3) Subject to this Part, the amount which any claimant shall be entitled to claim as compensation out of a fidelity fund shall be the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other

benefits received or receivable by him from any source other than the fund in reduction of the loss.

Notice calling for claims against fund

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

(2) A claim for compensation out of a fidelity fund in respect of a defalcation shall be made in writing to the securities exchange or futures exchange, as the case may be —

- (a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or
- (b) where no such notice has been published, within 6 months after the claimant became aware of the defalcation.

(3) Any claim which is not made in accordance with subsection (2) shall be barred unless the securities exchange or futures exchange otherwise allows.

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

Power of securities exchange or futures exchange to settle claims

189.—(1) A securities exchange or futures exchange may, subject to this Part, allow and settle any proper claim for compensation out of a fidelity fund at any time after the commission of the defalcation in respect of which the claim arose.

(2) Subject to subsection (3), a person shall not commence proceedings under this Part against a securities exchange or futures exchange without the consent of the securities exchange or futures exchange, as the case may be, unless —

- (a) the securities exchange or futures exchange has disallowed his claim; and

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

(3) A person who has been refused consent to commence proceedings under this Part by a securities exchange or futures exchange under subsection (2) may apply for leave to a Judge of the High Court in chambers who may make such order in the matter as he thinks fit.

(4) A securities exchange or futures exchange shall, after disallowing (whether wholly or in part) any claim for compensation out of a fidelity fund, serve notice of such disallowance in the prescribed form on the claimant or his solicitor.

(5) No proceedings against a securities exchange or futures exchange in respect of a claim which has been disallowed by the exchange shall be commenced after the expiration of 3 months after service of notice of disallowance under subsection (4).

(6) In any proceedings brought to establish a claim —

(a) evidence of any admission or confession by, or other evidence which would be admissible against, the member of a securities exchange or futures exchange or other person by whom it is alleged a defalcation was committed, shall be admissible to prove the commission of the defalcation, notwithstanding that the member or other person is not the defendant in or a party to those proceedings; and

(b) all defences which would have been available to that member or person shall be available to the securities exchange or futures exchange.

(7) A securities exchange or futures exchange or, where proceedings are brought to establish a claim, the High Court, if satisfied that the defalcation on which the claim is founded was actually committed, may allow the claim and act accordingly, notwithstanding that the person who committed the defalcation has not been convicted or prosecuted therefor or that the evidence on which the securities exchange or futures exchange or the High Court, as the case may be, acts would not

be sufficient to establish the guilt of that person upon a criminal trial in respect of the defalcation.

Power of securities exchange or futures exchange to require production of evidence

190.—(1) A securities exchange or futures exchange may require any person to produce and deliver any contract note, document or statement of evidence necessary to support any claim made, or necessary for the purpose either of exercising its rights against a member of a securities exchange or futures exchange or the directors of that member or any other person concerned, or of enabling criminal proceedings to be taken against any person in respect of a defalcation.

(2) Where a person who is required under subsection (1) to produce or deliver any contract note, document or statement of evidence fails to do so, the securities exchange or futures exchange may disallow any claim by him under this Part.

Subrogation of securities exchange or futures exchange to rights, etc., of claimant upon payment from fund

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

Payment of claims only from fund

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

Provision where fund insufficient to meet claims or where claims exceed total amount payable

193.—(1) Where the amount at credit in a fidelity fund is insufficient to pay the whole amount of all claims against it which have been allowed or in respect of which orders of the High Court have been made, then the amount at credit in the fund shall, subject

to subsection (2), be apportioned between the claimants in such manner as the securities exchange or futures exchange thinks equitable, and such claim shall, so far as it then remains unpaid, be charged against future receipts of the fund and paid out of the fund when moneys are available therein.

(2) Where the aggregate of all claims which have been allowed or in respect of which orders of the High Court have been made in relation to a defalcation by or in connection with a member of a securities exchange or futures exchange exceeds the total amount which may, pursuant to section 186 (10), be paid under this Part in respect of that member, then such total amount shall be apportioned between the claimants in such manner as the securities exchange or futures exchange thinks equitable.

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

Power of securities exchange or futures exchange to enter into contracts of insurance

194.—(1) A securities exchange or futures exchange may in its discretion, enter into any contract with any person or body of persons, corporate or unincorporate, carrying on fidelity insurance business in Singapore whereby the securities exchange or futures exchange will be insured or indemnified to the extent and in the manner provided by such contract against liability in respect of claims under this Part.

(2) Any contract under subsection (1) may be entered into in relation to members generally, or in relation to any particular member or members named therein, or in relation to members generally with the exclusion of any particular member or members named therein.

(3) No action shall lie against a securities exchange or futures exchange or against any member or employee of a securities exchange or futures exchange for injury alleged to have been suffered by any other member by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to it.

Application of insurance moneys

195. No claimant against a fidelity fund shall have any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this Part in respect of such contract, or have any right or claim with respect to any moneys paid by the insurer in accordance with any such contract.

PART XII**MARKET CONDUCT***Division 1 — Prohibited Conduct — Securities***Application of this Division**

196. This Division shall apply to —

- (a) acts occurring within Singapore in relation to —
 - (i) securities of any corporation, whether formed or carrying on business in Singapore or elsewhere; or
 - (ii) securities listed for quotation or quoted on a securities market in Singapore or elsewhere; and
- (b) acts occurring outside Singapore, in relation to —
 - (i) securities of a corporation that is formed or carrying on business in Singapore; or
 - (ii) securities listed for quotation or quoted on a securities market in Singapore.

False trading and market rigging transactions

197.—(1) No person shall create, or do anything that is intended or likely to create a false or misleading appearance —

- (a) of active trading in any securities on a securities market; or
- (b) with respect to the market for, or the price of, such securities.

(2) No person shall, by means of any purchase or sale of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

(3) Without prejudice to the generality of subsection (1), a person who —

- (a) effects, takes part in, is concerned in or carries out, directly or indirectly, any transaction of purchase or sale of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;
- (b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
- (c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

shall be deemed to have created a false or misleading appearance of active trading in securities on a securities market.

(4) In any proceedings against a person for a contravention of subsection (1) because of an act referred to in subsection (3), it is a defence if the defendant establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities market.

(5) For the purposes of this section, a purchase or sale of securities does not involve a change in the beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In any proceedings against a person for a contravention of subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes

for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in subsection (3) (a) to a transaction of purchase or sale of securities includes —

- (a) a reference to the making of an offer to purchase or sell securities; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to purchase or sell securities.

Securities market manipulation

198.—(1) No person shall effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the corporation on a securities market, with intent to induce other persons to subscribe for, purchase or sell securities of the corporation or of a related corporation.

(2) A reference in subsection (1) to transactions in securities of a corporation includes —

- (a) a reference to the making of an offer to purchase or sell such securities of the corporation; and
- (b) a reference to the making of an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities of the corporation.

False or misleading statements, etc.

199. No person shall make a statement, or disseminate information, that is false or misleading in a material particular and is likely —

- (a) to induce other persons to subscribe for securities;
- (b) to induce the sale or purchase of securities by other persons;
or
- (c) to have the effect of raising, lowering, maintaining or stabilising the market price of securities,

if, when he makes the statement or disseminates the information —

- (i) he does not care whether the statement or information is true or false; or

- (ii) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Fraudulently inducing persons to deal in securities

200.—(1) No person shall —

- (a) by making or publishing any statement, promise or forecast that he knows or ought reasonably to have known to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing of any statement, promise or forecast that is misleading, false or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular,

induce or attempt to induce another person to deal in securities.

(2) In any proceedings against a person for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1) (d), it is a defence if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

(3) In any proceedings against a person for a contravention of subsection (1), the opinion of any registered or public accountant as to the financial position of any company at any time or during any period in respect of which he has made an audit or examination of the affairs of the company according to recognised audit practice shall be admissible, for any party to the proceedings, as evidence of the financial position of the company at that time or during that period, notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

Employment of manipulative and deceptive devices

201. No person shall, directly or indirectly, in connection with the subscription, purchase or sale of any securities —

- (a) employ any device, scheme or artifice to defraud;

- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;
- (c) make any statement he knows to be false in a material particular; or
- (d) omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Dissemination of information about illegal transactions

202. No person shall circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to securities of that corporation, or of a corporation that is related to that corporation, which to his knowledge, was entered into or done in contravention of section 197, 198, 199, 200 or 201 or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201 if —

- (a) the person, or a person associated with the person, has entered into or purports to enter into any such transaction or has done or purports to do any such act or thing; or
- (b) the person, or a person associated with the person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination, the statement or information.

Continuous disclosure

203.—(1) This section shall apply to —

- (a) a corporation which is admitted to the official list of a securities exchange; or
- (b) a responsible person of a collective investment scheme the units of which are quoted on a securities exchange,

if the corporation or responsible person is required by the listing rules of the securities exchange to notify the securities exchange of

information on specified events or matters as they occur or arise for the purpose of the securities exchange making that information available to a securities market operated by the securities exchange.

(2) The corporation or responsible person must not intentionally, recklessly or negligently fail to notify the securities exchange of such information as is required to be disclosed under the listing rules of the securities exchange.

(3) Notwithstanding section 204, a contravention of subsection (2) shall not be an offence unless the failure to notify is intentional or reckless.

(4) For the purposes of this section, “responsible person” has the same meaning as in Division 2 of Part XIII.

Penalties under this Division

204.—(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after a court has made an order against him for the payment of a civil penalty under section 232 in respect of the contravention.

Division 2 — Prohibited Conduct — Futures Contracts, Leveraged Foreign Exchange Trading

Application of this Division

205. This Division shall apply to —

- (a) acts occurring within Singapore, in relation to —
 - (i) futures contracts, whether traded on a futures market in Singapore or elsewhere; or
 - (ii) foreign exchange in connection with leveraged foreign exchange trading, whether in Singapore or elsewhere; and

- (b) acts occurring outside Singapore, in relation to —
- (i) futures contracts traded on a futures market in Singapore;
 - (ii) foreign exchange in connection with leveraged foreign exchange trading in Singapore; or
 - (iii) foreign exchange in connection with leveraged foreign exchange trading that is accessible from Singapore.

False trading

206. No person shall create, or do anything that is intended or likely to create, a false or misleading appearance of active trading in any futures contract on a futures market or in connection with leveraged foreign exchange trading, or a false or misleading appearance with respect to the market for, or the price of futures contracts on a futures market or foreign exchange in connection with leveraged foreign exchange trading.

Bucketing

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

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

Manipulation of price of futures contract and cornering

208. No person shall, directly or indirectly —

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

Fraudulently inducing persons to trade in futures contracts

209.—(1) No person shall —

- (a) by making or publishing any statement, promise or forecast that he knows or ought reasonably to have known to be false, misleading or deceptive;
- (b) by any dishonest concealment of material facts;
- (c) by the reckless making or publishing of any statement, promise or forecast that is false, misleading or deceptive; or
- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular,

induce or attempt to induce another person to trade in a futures contract or engage in leveraged foreign exchange trading.

(2) In any proceedings against a person for a contravention of subsection (1) constituted by recording or storing information as mentioned in subsection (1) (d), it is a defence if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

Employment of fraudulent or deceptive devices, etc.

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

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

Dissemination of information about illegal transactions

211. No person shall circulate, disseminate, or authorise, or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of a class of futures contracts or foreign exchange in connection with leveraged foreign exchange

trading will, or is likely to, rise or fall or be maintained because of the market operations of one or more persons which, to his knowledge, are conducted in contravention of section 206, 207, 208, 209 or 210 if —

- (a) the person, or a person associated with the person, has conducted such market operations; or
- (b) the person, or a person associated with the person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination, the statement or information.

Penalties under this Division

212.—(1) Any person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of this Division after a court has made an order against him for the payment of a civil penalty under section 232 for the contravention.

Division 3 — Insider Trading

Application of this Division

213. This Division shall apply to —

- (a) acts occurring within Singapore, in relation to —
 - (i) securities of any corporation, whether formed or carrying on business in Singapore ;
 - (ii) securities listed for quotation or quoted on a securities market in Singapore or elsewhere; or
 - (iii) securities traded on a futures market in Singapore or elsewhere; and
- (b) acts occurring outside Singapore, in relation to —
 - (i) securities of a corporation that is formed or carries on business in Singapore;
 - (ii) securities listed for quotation or quoted on a securities market in Singapore; or

(iii) securities traded on a futures market in Singapore.

Interpretation of this Division

214. In this Division —

“information” includes —

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public;
- (b) matters relating to the intentions, or the likely intentions, of a person;
- (c) matters relating to negotiations or proposals with respect to —
 - (i) commercial dealings; or
 - (ii) dealing in securities;
- (d) information relating to the financial performance of a corporation or otherwise;
- (e) information that a person proposes to enter into, or had previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and
- (f) matters relating to the future;

“purchase”, in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party, acquiring the option or right under the contract, or taking an assignment of the option or right, whether or not on another’s behalf;

“securities” means —

- (a) debentures or stocks issued or proposed to be issued by a government;
- (b) debentures, stocks or shares issued or proposed to be issued by a corporation or body unincorporate;
- (c) any right, option or derivative in respect of any such debentures, stocks or shares;
- (d) any right under a contract for differences or under any other contract the purpose or pretended purpose of

which is to secure a profit or avoid a loss by reference to fluctuations in —

- (i) the value or price of any such debentures, stocks or shares;
 - (ii) the value or price of any group of any such debentures, stocks or shares;
 - (iii) an index of any such debentures, stocks, shares, bonds or notes;
- (e) any unit in a collective investment scheme as defined in section 283;
- (f) a futures contract only if the commodity which is the subject of the futures contract is a share, share index, stock or stock index,

but does not include —

- (i) bills of exchange;
- (ii) promissory notes; or
- (iii) certificates of deposit issued by a bank or finance company;

“sell”, in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party —

- (a) grant or assign the option or right; or
- (b) take, or cause to be taken, such action as releases the option or right,

whether or not on another’s behalf.

Information generally available

215. For the purposes of this Division, information is generally available if —

- (a) it consists of readily observable matter;
- (b) without limiting the generality of paragraph (a) —
 - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information; and

- (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or
- (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:
 - (i) information referred to in paragraph (a);
 - (ii) information made known as referred to in paragraph (b) (i).

Material effect on price or value of securities

216. For the purposes of this Division, a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

Trading and procuring trading in securities

217.—(1) For the purposes of this Division, trading in securities that is ordinarily permitted on the securities market or futures market shall be taken to be permitted on that securities market or futures market even though trading in any such securities on that securities market or futures market is suspended.

(2) For the purposes of this Division but without limiting the meaning that the expression “procure” has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the first-mentioned person is taken to procure the act or omission by the other person.

Prohibited conduct by connected person in possession of inside information

218.—(1) Subject to this Division, where —

- (a) a person who is connected to a corporation (referred to in this section as the connected person) possesses information concerning that corporation that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation; and

(b) the connected person knows or ought reasonably to know that —

- (i) the information is not generally available; and
- (ii) if it were generally available, it might have a material effect on the price or value of those securities,

subsections (2) to (6) shall apply.

(2) The connected person must not (whether as principal or agent) —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
- (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

(3) Where trading in the securities referred to in subsection (1) is permitted on the securities market of a securities exchange or futures market of a futures exchange, the connected person must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the connected person knows, or ought reasonably to know, that the other person would or would be likely to —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
- (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

(4) In any proceedings against a connected person for a contravention of subsection (2) or (3), where the prosecution or plaintiff proves that the connected person was at the material time —

- (a) in possession of information concerning the corporation to which he was connected; and
- (b) the information was not generally available,

it shall be presumed, until the contrary is proved, that the connected person knew at the material time that —

- (i) the information was not generally available; and
- (ii) if the information were generally available, it might have a material effect on the price or value of securities of that corporation.

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- (5) In this Division, a person is connected to a corporation if —
- (a) he is an officer of that corporation or of a related corporation;
 - (b) he is a substantial shareholder within the meaning of Division 4 of Part IV of the Companies Act (Cap. 50) in that corporation or in a related corporation; or
 - (c) he occupies a position that may reasonably be expected to give him access to information of a kind to which this section applies by virtue of —
 - (i) any professional or business relationship existing between himself (or his employer or a corporation of which he is an officer) and that corporation or a related corporation; or
 - (ii) his being an officer of a substantial shareholder within the meaning of Division 4 of Part IV of the Companies Act in that corporation or in a related corporation.

(6) For the purposes of subsection (5), “officer”, in relation to a corporation, includes —

- (a) a director, secretary or employee of the corporation;
- (b) a receiver, or receiver and manager, of property of the corporation;
- (c) a judicial manager of the corporation;
- (d) a liquidator of the corporation; and
- (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person.

Prohibited conduct by other persons in possession of inside information

219.—(1) Subject to this Division, where —

- (a) a person who is not a connected person referred to in section 218 (referred to in this section as the insider) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities; and

(b) the insider knows that —

- (i) the information is not generally available; and
- (ii) if it were generally available, it might have a material effect on the price or value of those securities,

subsections (2) and (3) shall apply.

(2) The insider must not (whether as principal or agent) —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
- (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

(3) Where trading in the securities referred to in subsection (1) is permitted on the securities market of a securities exchange or futures market of a futures exchange, the insider must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to —

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
- (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

Not necessary to prove intention to use

220.—(1) For the avoidance of doubt, in any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or plaintiff to prove that the accused person or defendant intended to use the information referred to in section 218 (1) (a) or 219 (1) (a) in contravention of section 218 or 219, as the case may be.

(2) In any proceedings against a person for a contravention of section 218 or 219, it is not necessary for the prosecution or plaintiff to prove the absence of facts or circumstances which if they existed would, by virtue of sections 222 to 230 or any regulations made under section 341, preclude the act from constituting a contravention of section 218 or 219, as the case may be.

Penalties under this Division

221.—(1) A person who contravenes section 218 or 219, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) No proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 after a court has made an order against him for the payment of a civil penalty under section 232 in respect of that contravention.

Exception for withdrawal from registered scheme

222. Sections 218 (2) and 219 (2) shall not apply in respect of the redemption of units in a collective investment scheme by a trustee or manager under a trust deed relating to that collective investment scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets less —

- (a) any liabilities of that collective investment scheme to which the units relates; and
- (b) any reasonable charge for purchasing the units.

Exception for underwriters

223.—(1) Sections 218 (2) and 219 (2) shall not apply in respect of —

- (a) subscribing for securities under an underwriting agreement or a sub-underwriting agreement;
- (b) entering into an agreement referred to in paragraph (a); or
- (c) selling securities subscribed for under an agreement referred to in paragraph (a).

(2) Sections 218 (3) and 219 (3) shall not apply in respect of —

- (a) the communication of information in relation to securities to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities; or

- (b) the communication of information in relation to securities by a person who may be required under an underwriting agreement to subscribe for any such securities if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:
 - (i) enter into a sub-underwriting agreement in relation to any such securities;
 - (ii) subscribe for any such securities.

Exception for purchase pursuant to legal requirement

224. Sections 218 (2) and 219 (2) shall not apply in respect of the purchase of securities pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

Exception for information communicated pursuant to a legal requirement

225. Sections 218 (3) and 219 (3) shall not apply in respect of the communication of information pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court.

Attribution of knowledge within corporations

226.—(1) For the purposes of this Division —

- (a) a corporation is taken to possess any information which an officer of the corporation possesses and which came into his possession in the course of the performance of duties as such an officer; and
- (b) if an officer of a corporation knows or ought reasonably to know any matter or thing because he is an officer of the corporation, it is to be presumed, until the contrary is proved, that the corporation knows or ought reasonably to know that matter or thing.

(2) A corporation does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement at any time merely because of information in the possession of an officer of the corporation if —

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- (a) the decision to enter into the transaction or agreement was taken on its behalf by a person other than that officer;
 - (b) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person who made the decision and that no advice with respect to the transaction or agreement was given to that person by a person in possession of the information; and
 - (c) the information was not so communicated and no such advice was so given.

Attribution of knowledge within partnerships, etc.

227.—(1) For the purposes of this Division —

- (a) a partner of a partnership is taken to possess any information —
 - (i) which another partner of the partnership possesses and which came into the other partner's possession in his capacity as a partner of the partnership; or
 - (ii) which an employee of the partnership possesses and which came into his possession in the course of the performance of duties as such an employee; and
- (b) if a partner or employee of a partnership knows or ought reasonably to know any matter or thing in his capacity as a partner or employee, it is to be presumed that every partner of the partnership knows or ought reasonably to know that matter or thing.

(2) The partners of a partnership do not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement at any time merely because one or more (but not all) of the partners, or an employee or employees of the partnership, are in actual possession of information if —

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:
 - (i) a partner who is taken to have possessed the information merely because another partner, or an employee of the partnership, was in possession of the information;

- (ii) an employee of the partnership who was not in possession of the information;
- (b) the partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

(3) A partner of a partnership does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement otherwise than on behalf of the partnership merely because he is taken to possess information that is in the possession of another partner or an employee of the partnership.

Exception for knowledge of person's own intentions or activities

228. An individual does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement in relation to securities merely because he is aware that he proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

Exception for corporations and its officers, etc.

229.—(1) A corporation does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement in relation to securities merely because it is aware that it proposes to enter into or has previously entered into, one or more transactions or agreements in relation to those securities.

(2) Subject to subsection (3), a corporation does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement in relation to securities merely because an officer of the corporation is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(3) Subsection (2) shall not apply unless the officer of the corporation mentioned in that subsection became aware of the matters

referred to in that subsection in the course of the performance of duties as such an officer.

(4) Subject to subsection (5), a person does not contravene section 218 (2) or 219 (2) by entering into a transaction or agreement on behalf of a corporation in relation to securities merely because he is aware that the corporation proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to those securities.

(5) Subsection (4) shall not apply unless the person became aware of the matters referred to in that subsection in the course of the performance of duties as an officer of the corporation or in the course of acting as an agent of the corporation.

Unsolicited transactions by holder of capital markets services licence and representatives

230.—(1) The holder of a capital markets services licence to deal in securities or trade in futures contracts, or a representative of such a holder does not contravene section 218 (2) or 219 (2) by subscribing for, purchasing or selling, or entering into an agreement to subscribe for, purchase or sell, securities that are traded on the stock market or futures market if —

- (a) the licensed person entered into the transaction or agreement concerned on behalf of another person (referred to in this section as the principal) under a specific instruction by the principal to enter into that transaction or agreement which was not solicited by the licensed person;
- (b) the licensed person has not given any advice to the principal in relation to the transaction or agreement or otherwise sought to procure the principal's instructions to enter into the transaction or agreement; and
- (c) the principal is not an associate of the licensed person.

(2) Nothing in this section shall affect the application of section 218 (2) or 219 (2) in relation to the principal.

Parity of information defences

231.—(1) In any proceedings against a person for a contravention of section 218 (2) or 219 (2) because the person entered into, or procured another person to enter into, a transaction or agreement at

a time when certain information was in the first-mentioned person's possession, it is a defence if the court is satisfied that —

- (a) the information came into the first-mentioned person's possession solely as a result of the information having been made known as referred to in section 215 (b) (i); or
- (b) the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.

(2) In an action against a person for a contravention of section 218 (3) or 219 (3) because the person communicated information, or caused information to be communicated, to another person, it is a defence if the court is satisfied that —

- (a) the information came into the first-mentioned person's possession solely as a result of the information having been made known as referred in section 215 (b) (i); or
- (b) the other person knew, or ought reasonably to have known, of the information before the information was communicated.

Division 4 — Civil Liability

Civil penalty

232.—(1) Whenever it appears to the Authority that any person has contravened any provision in this Part, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which resulted in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum —

- (a) not exceeding 3 times —
 - (i) the amount of the profit that the person gained; or
 - (ii) the amount of the loss that he avoided, as a result of the contravention; or
- (b) equal to \$50,000 if the person is not a corporation, or \$100,000 if the person is a corporation,

whichever is the greater.

(3) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which did not result in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.

(4) Notwithstanding subsections (2) and (3), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of a contravention of a provision in this Part and the order may be made on such terms as may be agreed between the Authority and the defendant.

(5) Nothing in this section shall be construed to prevent the Authority from entering into an agreement with any person to pay, with or without admission of liability, a civil penalty within the limits referred to in subsection (2) or (3) for a contravention of any provision in this Part.

(6) A civil penalty imposed under this section shall be payable to the Authority.

(7) If the person fails to pay the civil penalty imposed on him within the time specified in the court order referred to in subsection (4) or specified under the agreement referred to in subsection (5), the Authority may sue for and recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

(8) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, shall also be available to a defendant to an action under this section in respect of that contravention.

Action under section 232 not to commence, etc., in certain situations

233.—(1) An action under section 232 shall not be commenced after the expiration of 6 years from the date of the contravention of any of the provisions in this Part.

(2) An action under section 232 shall not be commenced if the person has been convicted or acquitted in criminal proceedings for the contravention of any of the provisions in this Part, except where he has been acquitted on the ground of the withdrawal of the charge against him.

(3) An action under section 232 shall be stayed after criminal proceedings have been commenced against the person for the contravention of any of the provisions in this Part, and may thereafter be continued only if —

- (a) that person has been discharged in respect of that contravention and the discharge does not amount to an acquittal; or
- (b) the charge against him in respect of that contravention has been withdrawn.

Civil liability

234.—(1) A person who has acted in contravention of any of the provisions in this Part which resulted in his gaining a profit or avoiding a loss (referred to in this section and sections 235 and 236 as the contravening person) shall, whether or not he had been convicted or had a civil penalty imposed on him in respect of that contravention, be liable to pay compensation to any person (referred to in this section and sections 235 and 236 as the claimant) who —

- (a) contemporaneously with the contravention, had subscribed for, purchased or sold securities, or entered into futures contract, or contracts or arrangements in connection with leveraged foreign exchange trading, of the same description; and
- (b) had suffered loss by reason of the difference between —
 - (i) the price at which the securities, futures contracts, or contracts in connection with leveraged foreign exchange trading were dealt in or traded contemporaneously with the contravention; and
 - (ii) the price at which the securities, futures contracts or contracts in connection with leveraged foreign exchange trading would have been likely to have been so dealt in or traded at the time of the contemporaneous dealing or trading if the contravention had not occurred.

(2) The amount of compensation that the contravening person is liable to pay to the claimant is the amount of the loss suffered by the claimant, up to the maximum recoverable amount.

(3) Any defence that is available to a person who is prosecuted for a contravention of any provision of this Part, shall also be available

to a defendant to an action under this section in respect of the contravention.

(4) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing or trading in which the loss occurred.

(5) In determining whether a dealing in securities, trading in futures contracts, or leveraged foreign exchange trading took place contemporaneously with the contravention under subsection (1), the Court shall take into account the following matters:

- (a) the volume of securities, futures contracts, or contracts in connection with leveraged foreign exchange trading of the same description dealt in or traded between the date and time of the contravention and the date and time of the dealing in securities, trading in futures contracts, or leveraged foreign exchange trading;
- (b) the date and time the contravention, if it was effected by a transaction or transactions involving the subscription for securities, purchase or sale of securities, trading in futures contracts or leveraged foreign exchange trading, was cleared and settled;
- (c) whether the dealing in securities, trading in futures contracts, or leveraged foreign exchange trading took place before or after the contravention;
- (d) in the case of a contravention under section 203, 218 or 219, whether the dealing in securities took place before or after the information to which the contravention relates became generally known;
- (e) such other factors and developments, whether in Singapore or elsewhere, as the court may consider relevant.

(6) In this section, “maximum recoverable amount”, in respect of each contravention by a contravening person means —

- (a) the amount of the profit that the contravening person gained; or
- (b) the amount of the loss that he avoided,

as a result of the contravention, after deducting all amounts of compensation that the contravening person had previously been ordered by a court to pay to other claimants under this section in respect of the same contravention.

Action under section 234 not to commence, etc., in certain situations

235.—(1) Except with the leave of court, no action under section 234 may be brought against the contravening person in respect of a contravention of any of the provisions in this Part which resulted in his gaining a profit or avoiding a loss after the commencement of —

- (a) criminal proceedings under this Part against the contravening person for the same contravention; or
- (b) an action under section 232 against the contravening person for the same contravention.

(2) Any action under section 234 against the contravening person in respect of a contravention of any of the provisions in this Part which resulted in his gaining a profit or avoiding a loss, being an action that is pending on the date of commencement of —

- (a) criminal proceedings under this Part against the contravening person for the same contravention; or
- (b) an action under section 232 against the contravening person for the same contravention,

shall be stayed, and may not thereafter be continued except with the leave of court.

(3) Leave under subsection (1) or (2) may not be granted if a date has been fixed by a court under section 236 (1) for the filing of claims, and in that event the claimant to the proposed action or the action that has been stayed, as the case may be, shall comply with such directions relating to the filing and proof of his claim under section 236 as that court may issue in his case.

Civil liability in event of conviction, etc.

236.—(1) Notwithstanding section 234, where the contravening person —

- (a) has been convicted of an offence under this Part; or
- (b) has an order for the payment of a civil penalty made against him under section 232, other than a consent order made with or without admission of contravention under section 232 (4),

in respect of the contravention of any of the provisions in this Part which resulted in his gaining a profit or avoiding a loss, the court which convicted him or made the order against him (referred to in this section as the relevant court) may, after the conviction or the

order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims for compensation in respect of that contravention.

(2) For the purposes of subsection (1), the relevant court shall not fix a date that is earlier than 3 months from the date the conviction or the order imposing the civil penalty, as the case may be, has been made final.

(3) The relevant court may, after the expiry of the date fixed under subsection (1), make an order against the contravening person to pay to each claimant who has filed and proven his claim for compensation an amount —

- (a) equal to the amount of compensation which that claimant has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 234 against the contravening person himself; or
- (b) equal to the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (a) bears to all amounts proved to the court,

whichever is the lesser.

(4) For the purposes of this section, a conviction is made final if —

- (a) the conviction is upheld on appeal, revision or otherwise;
- (b) the conviction is not subject to further appeal;
- (c) no notice of appeal against the conviction is lodged within the time prescribed by section 247 of the Criminal Procedure Code (Cap. 68); or
- (d) any appeal against the conviction is withdrawn.

(5) For the purposes of this section, an order imposing a civil penalty is made final if —

- (a) the order is not set aside on appeal or revision or is varied only as to the amount of the civil penalty to be imposed;
- (b) the order is not subject to further appeal;
- (c) no notice of appeal against the imposition of the penalty is lodged within the time prescribed by Rules of Court (Cap. 322, R 5) made under section 238; or
- (d) any appeal against the imposition of the penalty is withdrawn.

(6) For the purposes of this section, “maximum recoverable amount” has the same meaning given to that expression in section 234 (6).

Jurisdiction of District Court

237. A District Court shall have jurisdiction to hear and determine any action under section 232, 234 or 236 regardless of the monetary amount.

Rules of Court

238.—(1) Rules of Court may be made —

- (a) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under sections 232, 234 and 236; and
- (b) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

(2) Without prejudice to the generality of subsection (1), Rules of Court may, in relation to proceedings under section 236 —

- (a) provide for the advertisement of a notice for the filing and proof of claims under that section;
- (b) prescribe the procedure for the filing, proof and hearing of those claims; and
- (c) provide for the payment of the costs and fees of an action that has been stayed under section 235 (2).

PART XIII

OFFERS OF INVESTMENTS

Division 1 — Shares and Debentures

Subdivision (1) — Interpretation

Preliminary provisions

239.—(1) In this Division —

“borrowing corporation” means a corporation or any other entity that is or will be under a liability (whether or not such liability is present or future) to repay any money received or

to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the corporation or entity;

“debenture” includes debenture stock, bonds, notes and any other debt securities issued by a corporation or any other entity, whether or not constituting a charge on the assets of the issuer but does not include —

- (a) a cheque, letter of credit, order for the payment of money or bill of exchange;
- (b) subject to the regulations made under this Act, a promissory note having a face value of not less than \$100,000 and having a maturity period of not more than 12 months; or
- (c) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word “debenture” does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

“expert” has the same meaning as in the Companies Act (Cap. 50);

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

“minimum subscription” in relation to any shares, debentures or units of shares or debentures offered to the public for subscription, means the amount stated in the prospectus relating to the offer, as the minimum amount which in the opinion of the directors must be raised by the issue of the shares, debentures or units of shares or debentures so offered;

“preliminary document” means a document which has been lodged with the Authority and is issued for the purpose of determining the appropriate issue or sale price of, and the number of, shares in or debentures of, or units of shares in or debentures of, a corporation to be issued or sold and which contains the information required to be included in a

prospectus under sections 243 and 244, where applicable, except for such information as may be prescribed by the Authority;

“profile statement” means a profile statement referred to in section 240 (4);

“promoter”, in relation to a prospectus issued by or in connection with a corporation, means a promoter of the corporation who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures of, or any units of shares in or debentures of, a corporation or proposed corporation, and includes any document deemed to be a prospectus under section 256 or 257, but does not include —

(a) a profile statement; or

(b) any material, advertisement or publication which is authorised by section 251 (other than subsection (5));

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 241 (1), as the case may be;

“statutory meeting” has the same meaning as in the Companies Act (Cap. 50);

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 241 (1), as the case may be;

“trustee corporation” means —

(a) a company registered as a trust company under the Trust Companies Act (Cap. 336); or

(b) a corporation, other than a trust company referred to in paragraph (a), that is a public company under the Companies Act or under the laws of any other country which has been declared by the Authority to be a trustee corporation for the purposes of this Act;

“unit”, in relation to a share or debenture, means any right or interest, whether legal or equitable, in the share or debenture, by whatever name called, and includes any option to acquire any such right or interest in the share or debenture.

(2) For the purposes of this Division, a statement shall be deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) For the purposes of this Division, any invitation to the public to deposit money with or to lend money to a corporation or other entity (not being a prescribed corporation) shall be deemed to be an offer to the public for subscription or purchase, or invitation to the public to subscribe for or purchase, debentures of the corporation or entity; and any document that is issued or intended or required to be issued by a corporation or other entity acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the corporation or entity in respect of any money that is or may be deposited with or lent to the corporation in response to such an invitation shall be deemed to be a debenture.

(4) In subsection (3), “prescribed corporation” means —

(a) any bank licensed under the Banking Act (Cap. 19); or

(b) any corporation or other entity or any corporation or other entity of a class which has been declared by the Authority by notification published in the *Gazette* to be a prescribed corporation, subject to such conditions or restrictions as it may think fit to impose by notice in writing.

(5) The Authority may, at any time by notice in writing, vary or revoke any condition or restriction imposed under subsection (4) (b).

(6) Any reference in this Division to making an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or making an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation, shall, unless the contrary intention appears —

- (a) include a reference to —
- (i) making an offer of shares in or debentures of, or units of shares in or debentures of, a corporation to any section of the public for subscription or purchase, or to making an invitation to any section of the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation, as the case may be, whether by selection as customers of the person making the offer or the invitation or in any other manner;
 - (ii) inviting applications from any section of the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation; and
 - (iii) the provision of any facility, made available to the public or any section of the public, that enables a person to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation;
- (b) but does not include the following:
- (i) an offer or invitation to enter into an underwriting agreement relating to shares in or debentures of, or units of shares in or debentures of, a corporation;
 - (ii) an offer or invitation made to existing members or debenture holders of a corporation (whether or not it is renounceable in favour of persons other than existing members or debenture holders) which —
 - (A) relates to shares in or debentures of that corporation, or to units of such shares or debentures; and
 - (B) is not an offer or invitation to which section 256 applies; and
 - (iii) an offer made to existing members of a company under section 306 of the Companies Act (Cap. 50) which relates to shares, or units of shares, in the company.

(7) Any reference in the Division to the debentures of a corporation shall include a reference to debentures of the government of any state or any other entity.

(8) This Division applies only in relation to offers or invitations to the public to subscribe for or purchase shares, debentures, or units of shares or debentures, made on or after the commencement of this Division.

Subdivision (2) — Prospectus Requirements

Requirement for prospectus and profile statement, where relevant

240.—(1) No person shall make an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation unless such offer or invitation —

(a) is made in or accompanied by a prospectus in respect of the offer or invitation —

(i) that is prepared in accordance with sections 243 and 244, where applicable;

(ii) a copy of which, being one that has been signed by every director, and by every person who is named therein as a proposed director, of the corporation or by a person authorised by him, is lodged with the Authority together with a written application for the registration of the prospectus; and

(iii) that is registered by the Authority; and

(b) complies with such requirements as may be prescribed.

(2) A person who lodges a preliminary document with the Authority shall be deemed to have lodged a prospectus with the Authority.

(3) A preliminary document referred to in subsection (2) must contain all information to be included in a prospectus other than such information as may be prescribed by the Authority.

(4) Notwithstanding subsection (1), an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation, may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this section as a profile statement), instead of a prospectus, if —

- (a) a prospectus in respect of such offer or invitation is prepared in accordance with sections 243 and 244, where applicable, and the profile statement is prepared in accordance with section 246;
- (b) a copy of the prospectus and a copy of the profile statement, each of which has been signed by every director, and by every person who is named therein as a proposed director, of the corporation or by a person authorised by him, are lodged with the Authority together with a written application for the registration of the prospectus and a written application for the registration of the profile statement respectively; and the prospectus is lodged no later than the profile statement;
- (c) the prospectus and profile statement are registered by the Authority;
- (d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and
- (e) the offer or invitation complies with such requirements as may be prescribed.

(5) No person shall make any offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation, if that corporation has not been formed or does not exist.

(6) Subsection (1) shall not apply to an offer or invitation in respect of shares in or debentures of, or units of shares in or debentures of, a corporation that is exempted under Subdivision 4.

(7) Any person who contravenes subsection (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and in the case of a continuing offence, to a further fine not exceeding \$15,000 for everyday or part thereof during which the offence continues after conviction.

(8) The Authority may register a prospectus or a profile statement on any day between the 14th and 21st day (both days inclusive) from the date of lodgment thereof with the Authority, unless —

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- (a) the Authority gives to the person who lodged the prospectus or profile statement a notice of an opportunity to be heard under subsection (15);
 - (b) the Authority gives notice of an extension, in which case the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —
 - (i) register the prospectus or profile statement; or
 - (ii) give to the person who lodged the prospectus or profile statement a notice of an opportunity to be heard under subsection (15); or
 - (c) the person who lodged the prospectus or profile statement applies in writing for the prospectus or profile statement to be registered at a later date, in which case the Authority may register the prospectus or profile statement at such later date as the Authority thinks fit.

(9) Where a prospectus lodged with the Authority is a preliminary document, the Authority shall not register the prospectus unless a copy of the prospectus containing the information required to be stipulated in the prospectus under sections 243 and 244, including such information which could be omitted from the preliminary document by virtue of subsection (3), has been furnished to the Authority.

(10) Subject to subsection (11) —

- (a) where any amendment to a prospectus is lodged prior to the registration of such prospectus, the prospectus and any profile statement which is lodged shall be deemed to have been lodged when such amendment was lodged; and
- (b) where any amendment to a profile statement is lodged prior to the registration of such profile statement, the profile statement shall be deemed to have been lodged when such amendment was lodged.

(11) Where an amendment to a prospectus or profile statement is lodged prior to the registration of the prospectus or profile statement —

- (a) with the consent of the Authority; or
- (b) pursuant to an order by the Authority,

it shall be treated as part of the original prospectus or profile statement.

(12) The Authority may publish a prospectus or profile statement for public information after it has been lodged with the Authority and for the purposes of this subsection, the person who lodges the prospectus or profile statement shall provide the Authority with a copy of the prospectus or profile statement in such form or medium for publication as the Authority may require.

(13) The Authority shall refuse to register a copy of any prospectus if —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement or matter;
- (b) there is an omission from the prospectus of any information that is required to be included in it under section 243 or 244;
- (c) a copy of the prospectus signed by every director, and by every person who is named therein as a proposed director of the corporation, or by a person authorised by him in writing, is not lodged with the Authority;
- (d) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;
- (e) copies verified as prescribed of any consent required by section 249 to the issue of the prospectus are not lodged with the Authority; or
- (f) the Authority is of the opinion that it is not in the public interest to do so.

(14) The Authority shall refuse to register a copy of any profile statement if —

- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement or matter;
- (b) there is an omission from the profile statement of information required by section 246 to be included in it or an inclusion in the profile statement of information prohibited by that section from being included in it;
- (c) a copy of the profile statement signed by every director, and by every person who is named therein as a proposed director of the corporation, or by a person authorised by him in writing, is not lodged with the Authority;
- (d) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;
- (e) the prospectus has not been registered by the Authority; or

(f) the Authority is of the opinion that it is not in the public interest to do so.

(15) The Authority shall not refuse to register a copy of a prospectus under subsection (13) or profile statement under subsection (14) without giving the person who lodged the prospectus or profile statement an opportunity to be heard, except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

- (a) the corporation is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
- (b) execution against the corporation in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the corporation;
- (d) the corporation has entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation.

(16) Any person who is aggrieved by the refusal of the Authority to register a copy of a prospectus or profile statement under subsection (13) or (14) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

(17) If —

- (a) a prospectus or profile statement is issued, circulated or distributed without a copy thereof having been registered by the Authority; or
- (b) an application to subscribe for or purchase shares or debentures, or units of shares or debentures is accepted, or shares or debentures, or units of shares or debentures are allotted, issued or sold, without a copy of a prospectus and profile statement, where applicable, in respect of the shares or debentures, or units of shares or debentures, having been registered by the Authority,

the corporation and every person who is knowingly a party to the issue, circulation or distribution of the prospectus or profile statement, the

acceptance of the application to subscribe for or purchase the shares or debentures, or units of shares or debentures, or the allotment, issue or sale of the shares or debentures, or units of shares or debentures, as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(18) Every corporation shall cause a true copy of every document referred to in subsection (13) (e) to be deposited within 7 days after registration of the prospectus at the registered office of the corporation in Singapore and, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose.

(19) Every corporation shall keep a true copy of every document referred to in subsection (13) (e), for a period of at least 6 months after the registration of the prospectus, to be made available for the inspection of the members and creditors of the corporation without fee.

(20) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties not exceeding a fine of \$50,000.

Lodging supplementary document or replacement document

241.—(1) If, after a prospectus or profile statement is registered but before the close of the offer or invitation, the person making the offer or invitation to the public to subscribe for or purchase shares, debentures or units of shares or debentures becomes aware of —

- (a) a false or misleading statement or matter in the prospectus or profile statement;
- (b) an omission from the prospectus of any information that should have been included in it under section 243 or 244, or an omission from the profile statement of any information that should have been included in it under section 246, as the case may be; or
- (c) a new circumstance that —
 - (i) has arisen since the prospectus or profile statement was lodged with the Authority; and

(ii) would have been required by —

(A) section 243 or 244 to be included in the prospectus; or

(B) section 246 to be included in the profile statement,

if it had arisen before the prospectus or the profile statement, as the case may be, was lodged,

and that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus, or a supplementary or replacement profile statement (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.

(2) At the beginning of a supplementary document, there shall be —

(a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;

(b) an identification of the prospectus or profile statement it supplements;

(c) an identification of any previous supplementary document lodged with the Authority in relation to the offer or invitation; and

(d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document.

(3) At the beginning of a replacement document, there shall be —

(a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and

(b) an identification of the prospectus or profile statement it replaces.

(4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

(5) The person who lodges a supplementary document or the corporation concerned shall take reasonable steps to inform potential investors of such lodgment and make available the supplementary

document to them, and, for the purposes of the application of this Division to events that occur after the lodgment of the supplementary document —

- (a) where the supplementary document is a supplementary prospectus, the prospectus shall be taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus; and
- (b) where the supplementary document is a supplementary profile statement, the profile statement shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement.

(6) The person who lodges a replacement document or the corporation concerned shall take reasonable steps to inform potential investors of such lodgment and make available the replacement document to them, and, for the purposes of the application of this Division to events that occur after the lodgment of the replacement document —

- (a) where the replacement document is a replacement prospectus, the prospectus shall be taken to be the replacement prospectus; and
- (b) where the replacement document is a replacement profile statement, the profile statement shall be taken to be the replacement profile statement.

(7) If a supplementary document or replacement document is lodged with the Authority, the offer or invitation shall be kept open for at least 14 days after the lodgment of the supplementary document or replacement document.

(8) Where prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to subscribe for shares, debentures, or units of shares or debentures and —

- (a) where the shares, debentures, or units of shares or debentures have not been issued to the applicants, the corporation shall either —
 - (i) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and

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- provide the applicants with an option to withdraw their applications; or
- (ii) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled, and the corporation shall, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the shares or debentures, or units of shares or debentures; or
- (b) where the shares, debentures, or units of shares or debentures, have been issued to the applicants, the corporation shall either —
- (i) within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to return to the corporation shares or debentures, or units of shares or debentures, which they do not wish to retain title in; or
 - (ii) treat the issue of the shares or debentures, or units of shares or debentures as void, in which case the issue shall be deemed void and the corporation shall, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys paid by them for the shares or debentures, or units of shares or debentures.

(9) Subsections (8) (b) and (11) have effect notwithstanding sections 73, 76 and 76A of the Companies Act (Cap. 50).

(10) An applicant who wishes to exercise his option under subsection (8) (a) (i) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document notify the corporation of this, whereupon the corporation shall, within 7 days from the receipt of such notification, pay to him all moneys paid by him on account of his application for the shares, debentures or units of shares or debentures.

(11) An applicant who wishes to exercise his option under subsection (8) (b) (i) to return shares, debentures or units of shares or

debentures issued to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the corporation of this and return all documents, if any, purporting to be evidence of title to those shares or debentures, or units of shares or debentures, to the corporation, whereupon the corporation shall, within 7 days from the receipt of such notification and documents, if any, pay to him all moneys paid by him for the shares, debentures or units of shares or debentures and the issue of those shares or debentures, or units of shares or debentures, shall be deemed to be void.

(12) Where, prior to the lodgment of the supplementary document or replacement document, applications have been made under the original prospectus or profile statement to purchase shares or debentures, or units of shares or debentures and —

(a) where the shares or debentures, or units of shares or debentures have not been sold to the applicants, the corporation shall either —

(i) on behalf of the vendor, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with an option to withdraw their applications; or

(ii) treat the applications as withdrawn and cancelled, in which case the applications shall be deemed to have been withdrawn and cancelled and the corporation shall, on behalf of the vendor, within 7 days from the date of lodgment of the supplementary document or replacement document, pay to the applicants all moneys the applicants have paid on account of their applications for the shares or debentures, or units of shares or debentures; or

(b) where the shares or debentures, or units of shares or debentures, have been sold to the applicants, the corporation shall either —

(i) on behalf of the vendor, within 7 days from the date of lodgment of the supplementary document or replacement document, give the applicants the supplementary document or replacement document, as the case may be, and provide the applicants with

an option to return to the corporation shares or debentures, or units of shares or debentures, which they do not wish to retain title in; or

- (ii) treat the sale of the shares or debentures, or units of shares or debentures as void, in which case the sale shall be deemed void and the corporation shall, on behalf of the vendor —
 - (A) if documents purporting to evidence title had been issued to the applicants, within 7 days from the date of the lodgment of the supplementary document or replacement document, inform the applicants to return such documents to the corporation within 14 days from that date; and
 - (B) within 7 days from the date of the receipt of those documents (if applicable) or the date of the lodgment of the supplementary document or replacement document, whichever is later, pay to the applicants all moneys paid by them for the shares, debentures or units of shares or debentures.

(13) An applicant who wishes to exercise his option under subsection (12) (a) (i) to withdraw his application shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the corporation of this whereupon the corporation shall, on behalf of the vendor, within 7 days of the receipt of such notification, pay to him all moneys paid by him on account of his application for the shares, debentures or units of shares or debentures.

(14) An applicant who wishes to exercise his option under subsection (12) (b) (i) to return shares, debentures or units of shares or debentures sold to him shall, within 14 days from the date of lodgment of the supplementary document or replacement document, notify the corporation of this and return all documents, if any, purporting to evidence title to those shares or debentures, or units of shares or debentures, to the corporation, whereupon the corporation shall, on behalf of the vendor, within 7 days from the receipt of such notification and documents, if any, pay to him all moneys paid by him for the shares, debentures or units of shares or debentures and the

sale of those shares, debentures, or units of shares or debentures shall be deemed to be void.

(15) Any person who contravenes subsection (8) or (12) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

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

Stop order for prospectus and profile statement

242.—(1) If a prospectus that has been registered —

- (a) contains any statement or matter which, in the Authority's opinion, is false or misleading;
- (b) omits any information that should have been included in it under section 243 or 244; or
- (c) does not in the Authority's opinion comply with the requirements of this Act,

the Authority may by an order in writing (referred to in this section as a stop order) served on the person who lodged the prospectus direct that no or no further shares or debentures, or units of shares or debentures to which the prospectus relates be allotted, issued or sold.

(2) If a profile statement that has been registered —

- (a) contains any statement or matter which, in the Authority's opinion, is false or misleading;
- (b) omits any information that should have been included in it under section 246 or includes information that should have been excluded from it under section 246; or
- (c) does not in the Authority's opinion comply with the requirements of this Act,

the Authority may by an order in writing (referred to in this section as a stop order) served on the person who lodged the profile statement, direct that no or no further shares or debentures, or units of shares or debentures to which the profile statement relates be allotted, issued or sold.

(3) Notwithstanding subsections (1) and (2), the Authority shall not serve a stop order if any of the shares or debentures or units of shares or debentures to which the prospectus or profile statement relates have been issued or sold, and listed on a securities exchange and trading in them has commenced.

(4) The Authority shall not serve a stop order under subsection (1) or (2) without giving the person who lodged the prospectus or profile statement an opportunity to be heard.

(5) Where applications to subscribe for shares, debentures or units of shares or debentures to which the prospectus or profile statement relates have been made prior to the stop order, and —

(a) where the shares or debentures, or units of shares or debentures have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the corporation shall, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the shares, debentures or units of shares or debentures; or

(b) where the shares or debentures, or units of shares or debentures, have been issued to the applicants, the issue of the shares or debentures, or units of shares or debentures, shall be deemed to be void and the corporation shall, within 14 days from the date of the stop order, pay to the applicants all moneys paid by them for the shares, debentures, or units of shares or debentures.

(6) Subsection (5) (b) has effect notwithstanding sections 73, 76 and 76A of the Companies Act (Cap. 50).

(7) Where applications to purchase shares, debentures or units of shares or debentures to which the prospectus or profile statement relates have been made prior to the stop order, and —

(a) where the shares or debentures, or units of shares or debentures have not been sold to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the corporation shall, on behalf of the vendor, within 14 days from the date of the stop order, pay to the applicants all moneys the applicants have paid on account of their applications for the shares or debentures, or units of shares or debentures; or

(b) where the shares or debentures, or units of shares or debentures have been sold to the applicants, the sale shall be deemed to be void and the corporation shall, on behalf of the vendor —

- (i) if documents purporting to evidence title had been issued to the applicants, within 7 days from the date of the stop order, inform all applicants to return such documents to the corporation within 14 days from that date; and
- (ii) within 7 days from the date of the receipt of those documents (if applicable) or the date of the stop order, whichever is later, pay to the applicants all moneys paid by them for the shares, debentures or units of shares or debentures.

(8) If the Authority is of the opinion that any delay in serving a stop order pending the holding of a hearing required under subsection (4) is not in the interests of the public, the Authority may, without giving an opportunity to be heard, serve an interim stop order on the person who lodged the prospectus or profile statement directing that no or no further shares in or debentures of, or units of shares in or debentures of, a corporation to which the prospectus or profile statement relates be allotted, issued or sold.

(9) An interim stop order shall, unless revoked, be in force —

(a) in a case where —

- (i) it is served during a hearing under subsection (4); or
- (ii) a hearing under subsection (4) is commenced while it is in force,

until the Authority makes an order under subsection (1) or (2); and

(b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

(10) Subsections (5) and (7) shall not apply where only an interim stop order has been served.

(11) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing

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

(12) Any person who contravenes subsection (5) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Contents of prospectus

243.—(1) A prospectus for an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or for an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation shall contain —

- (a) all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified in subsection (3); and
- (b) the matters prescribed by the Authority.

(2) The prospectus shall, with respect to subsection (1) (a), contain such information —

- (a) only to the extent to which it is reasonable for investors and their professional advisers to expect to find in the prospectus; and
- (b) only to the extent that a person whose knowledge is relevant —
 - (i) actually knows the information; or
 - (ii) in the circumstances ought reasonably to have obtained the information by making enquiries.

(3) The matters referred to in subsection (1) (a) shall relate to —

- (a) the rights and liabilities attaching to the shares or debentures, or units of the shares or debentures;
- (b) the assets and liabilities, profits and losses, financial position and performance, and prospects of the corporation that is to issue or has issued the shares or debentures, or units of the shares or debentures;
- (c) if the person making the offer or invitation is one who controls the corporation whose shares or debentures underlie the offer or invitation, the assets and liabilities, profits and losses,

financial position and performance, and prospects of that corporation; and

- (d) in the case of options over shares or debentures, the capacity of the person making the offer or invitation to issue or deliver the relevant shares or debentures.

(4) In deciding what information shall be included under subsection (1) (a), regard shall be had to —

- (a) the nature of the shares or debentures, or units of the shares or debentures, and the nature of the corporation concerned;
- (b) the matters that likely investors may reasonably be expected to know; and
- (c) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.

(5) For the purposes of subsection (2), a person's knowledge is relevant only if he is one of the following persons:

- (a) the person making the offer or invitation;
- (b) if the person making the offer or invitation is a corporation, a director of the corporation;
- (c) a proposed director of the corporation whose shares or debentures, or units of shares or debentures, will be issued under the offer or invitation;
- (d) a person named in the prospectus as an underwriter of the issue or sale;
- (e) a person named in the prospectus as a stockbroker to the issue or sale if he participates in any way in the preparation of the prospectus;
- (f) a person named in the prospectus with his consent as having made a statement —
- (i) that is included in the prospectus; or
- (ii) on which a statement made in the prospectus is based;
- (g) a person named in the prospectus with his consent as having performed a particular professional or advisory function.

(6) A condition requiring or binding an applicant for shares in or debentures of, or units of shares in or debentures of, a corporation to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(7) This section does not affect any liability that a person has under any other law.

Invitation to public to lend money to or to deposit money with corporation

244.—(1) In addition to any other requirement imposed under this Subdivision in respect of such invitation, no person shall make an invitation to the public to deposit money with or lend money to a corporation or any other entity unless —

- (a) the prospectus concerned contains an undertaking by the corporation or entity that it will, within 2 months after the acceptance of any money as a deposit or loan from any person in response to the invitation, issue to that person a document which acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the corporation or entity in respect of that deposit or loan; and
- (b) the document is described or referred to in the prospectus and in any other document, whether constituting or relating to the invitation in any of the following forms of debt obligation, in accordance with this section:
 - (i) unsecured loan stock, unsecured note, unsecured deposit note, unsecured debenture or certificate of unsecured debenture stock, bonds (including bearer and Eurobonds), short or medium term notes (including Euronotes) or convertible loan stock;
 - (ii) mortgage bonds, mortgage debenture or certificate of mortgage debenture stock;
 - (iii) a secured debenture or certificate of debenture stock;
or
 - (iv) such other form as the Authority may approve as having effect for the purposes of this section but subject to such conditions as it may impose, in accordance with this section.

(2) Where pursuant to an invitation referred to in subsection (1) a corporation or any other entity has accepted from any person any money as a deposit or loan, the corporation or entity concerned shall, within 2 months after the acceptance of the money, issue to that person a document which —

(a) acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the corporation or entity in respect of that deposit or loan; and

(b) complies with the other requirements of this section.

(3) The document shall be described or referred to in the prospectus and in any other document whether constituting or relating to the invitation and in the document itself in the form described in subsection (1) (b) (i) or approved under subsection (1) (b) (iv) unless under subsection (4) or (5) it is and may be otherwise described.

(4) The document may be described or referred to in the prospectus or in such other document or in the document itself in the form described in subsection (1) (b) (ii) if, and only if, there is included in the prospectus the statements and the valuation prescribed by the Authority.

(5) The document may be described or referred to in the prospectus or in such other document or in the document itself in the form described in subsection (1) (b) (iii) if, and only if —

(a) under subsection (4) it is entitled to be described or referred to in that prospectus or document in the form described in subsection (1) (b) (ii) but is not described or referred to in that form; or

(b) there is included in the prospectus matters prescribed by the Authority.

(6) Nothing in this section shall apply to a prescribed corporation.

(7) For the purposes of subsection (6), “prescribed corporation” has the same meaning as in section 239 (4).

(8) Every corporation or other person or entity that contravenes any of the provisions of this section and every officer of a corporation or other entity who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both.

(9) For the purposes of this section, a certificate issued by a borrowing corporation certifying, in respect of any deposit with or a loan to the borrowing corporation, the registered holder (or in the case of a bearer instrument, the bearer) of a specified number or value of the debt obligations described or approved under

subsection (1) (b), issued by the borrowing corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate, shall be deemed to be a document evidencing the indebtedness of the borrowing corporation in respect of that deposit or loan.

Retention of over-subscriptions and statement of asset-backing in debenture issues

245.—(1) A corporation or other entity shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the corporation or entity has specified in the prospectus —

- (a) that it expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained, being an amount not more than 25% in excess of the amount of the issue as disclosed in the prospectus.

(2) Subject to regulations made by the Authority for the purposes of this subsection, where a corporation or entity specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions —

- (a) the corporation or entity shall not make, authorise or permit any statement of or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the corporation or entity and of its guarantor corporations; and
- (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the corporation or entity would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

(3) Every corporation or other entity or other person that 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.

Contents of profile statement

246.—(1) A profile statement for an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation shall contain —

- (a) the following particulars:
 - (i) identification of the corporation and the nature of the shares or debentures, or units of shares or debentures, in respect of which the offer or invitation is made to the public;
 - (ii) the nature of the risks involved in investing in the shares or debentures, or units of shares or debentures; and
 - (iii) details of all amounts payable in respect of the shares or debentures, or units of shares or debentures (including any amount by way of fee, commission or charge);
 - (b) a statement that copies of the prospectus are available for collection at the times and places specified in the profile statement; and
 - (c) a statement that the directors are satisfied that the profile statement contains a fair summary of the key information set out in the prospectus.
- (2) A profile statement shall not contain —
- (a) any statement or matter that is false or misleading in the form and context in which it is included;
 - (b) any material information that is not contained in the prospectus; and
 - (c) any material information that differs in any material particular from that set out in the prospectus.

Exemption from requirements as to form or content of prospectus or profile statement

247.—(1) A person may apply to the Authority in writing for an order of exemption from any requirement of this Act relating to the form or content of a prospectus or a profile statement, and the

Authority may make such an order either unconditionally or subject to such conditions or restrictions as it thinks fit.

(2) The Authority shall not make an order under subsection (1) unless it is of the opinion that compliance with the requirements in respect of which exemption has been applied for would be unduly burdensome.

(3) The Authority may, by order published in the *Gazette*, exempt any class or description of prospectuses or profile statements from such requirement of this Act relating to the form or content of a prospectus or a profile statement, as the case may be, as may be specified in the order.

(4) An exemption referred to in subsection (3) may be subject to such conditions or restrictions as may be specified in the order.

(5) Any person who contravenes any of the conditions or restrictions specified in the order made under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(6) A prospectus or a profile statement shall be deemed to be in compliance with all the requirements of this Act relating to the form or content of a prospectus or a profile statement, as the case may be, if it is issued in compliance with an order made under subsection (1) or (3).

Exemption for certain governmental and international corporations as regards signing of copy of prospectus or profile statement by all directors

248.—(1) This section shall apply only to corporations that are both of a governmental and international character.

(2) A corporation to which this section applies may apply in writing to the Authority for an exemption from the requirements of section 240 (1) (a) (ii), (4) (b), (13) (c) and (14) (c) and the Authority may, if it considers those requirements unduly burdensome on the corporation, exempt such corporation from complying therewith.

(3) The Authority may subject such exemption to a requirement that such minimum number of directors who are resident in

Singapore as the Authority may, in that case, decide must sign the copy of the prospectus or profile statement.

(4) In the event that no director is resident in Singapore, the Authority may permit a duly authorised agent to sign the prospectus or profile statement so long as such authorisation is supported by a resolution of the board of the corporation.

(5) The Authority may, if satisfied that a particular corporation cannot comply with any of the requirements in subsection (3) or (4), grant the exemption applied for.

(6) Any prospectus or profile statement that complies with the terms of exemption granted by the Authority shall be deemed to be a prospectus or profile statement for the purposes of this Division and a copy of such prospectus or profile statement shall be registered by the Authority.

Expert's consent to issue of prospectus containing statement by him

249.—(1) A prospectus making an offer of, or inviting subscription for or purchase of, shares in or debentures of, or units of shares in or debentures of, a corporation and including a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless —

- (a) the expert has given, and has not before delivery of a copy of the prospectus for registration withdrawn, his written consent to the issue thereof with the statement included in the form and context in which it is included; and
- (b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

(2) If any prospectus is issued in contravention of this section, the corporation and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Duration of validity of prospectus

250.—(1) No person shall make an offer to the public of shares, debentures, or units of shares or debentures, for subscription or

purchase, or an invitation to the public to subscribe for or purchase shares, debentures, or units of shares or debentures, or allot, issue or sell shares or debentures, or units of shares or debentures, to the public, and, in the case of a corporation or proposed corporation, no officer or promoter shall authorise or permit an offer to the public of shares, debentures, or units of shares or debentures, for subscription or purchase, or an invitation to the public to subscribe for or purchase shares, debentures, or units of shares or debentures to be made, or the allotment, issue or sale of shares or debentures, or units of shares or debentures to the public, on the basis of a prospectus or profile statement after the expiration of 6 months from the date of registration by the Authority of the prospectus in relation to such offer, invitation, allotment, issue or sale.

(2) If default is made in complying with subsection (1), the person and, in the case of a corporation or proposed corporation, every officer or promoter 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.

(3) Where an allotment, issue or sale of shares or debentures, or units of shares or debentures, is made on the basis of a prospectus or profile statement after the expiration of 6 months from the date of registration by the Authority of the prospectus in relation to such allotment, issue or sale, such allotment, issue or sale shall not, by reason only of that fact, be voidable or void.

Restrictions on advertisements, etc.

251.—(1) If a prospectus is required for an offer or invitation, or intended offer or invitation, of shares in or debentures of, or units of shares in or debentures of, a corporation to the public for subscription or purchase, a person shall not —

- (a) advertise the offer or invitation or intended offer or invitation; or
- (b) publish a statement that —
 - (i) directly or indirectly refers to the offer or invitation or intended offer or invitation; or

- (ii) is reasonably likely to induce persons to subscribe for or purchase the shares or debentures, or units of shares or debentures,

unless the advertisement or publication is authorised by this section.

(2) In determining whether a statement —

- (a) indirectly refers to an offer or invitation, or intended offer or invitation, of shares or debentures, or units of shares or debentures; or
- (b) is reasonably likely to induce persons to subscribe for or purchase shares or debentures, or units of shares or debentures,

regard shall be had to whether the statement —

- (i) forms part of the normal advertising of a corporation's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services;
- (ii) communicates information that materially deals with the affairs of the corporation; and
- (iii) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

(3) Notwithstanding subsection (6), a person may, before a prospectus or profile statement is registered by the Authority, disseminate a preliminary document which has been lodged with the Authority to persons specified in sections 274 and 275 without contravening subsection (1), if —

(a) the front page of the preliminary document contains —

- (i) the following statement:

“This is a preliminary document and is subject to further amendments and completion in the prospectus to be registered by the Authority.”;
- (ii) a statement that a person to whom a copy of the preliminary document has been issued shall not circulate it to any other person; and
- (iii) a statement in bold lettering that no offer or invitation shall be made or received, and no agreement shall be made, on the basis of the preliminary document, to purchase or subscribe for any shares or debentures, or

units of shares or debentures, to which the preliminary document relates;

- (b) the preliminary document does not contain or have attached to it any form of application that will facilitate the making by any person of an offer to the public of shares, debentures, or units of shares or debentures, to which the preliminary document relates, for subscription or purchase, or an invitation to the public to subscribe for or purchase those shares, debentures, or units of shares or debentures, to which the preliminary document relates, or the acceptance of such an offer or invitation by any person; and
- (c) when the prospectus is registered by the Authority, the person takes reasonable steps to notify the persons to whom the preliminary document was issued that the registered prospectus is available for collection.

(4) Notwithstanding subsection (6), a person does not contravene subsection (1) by presenting oral or written material, on matters contained in a preliminary document which has been lodged with the Authority, to persons specified in sections 274 and 275 before a prospectus or profile statement is registered by the Authority.

(5) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority without contravening subsection (1).

(6) Before a prospectus or profile statement is registered, an advertisement or publication does not contravene subsection (1) if it contains only the following:

- (a) a statement that identifies the person making the offer or invitation or intended offer or invitation, and the shares or debentures, or units of shares or debentures;
- (b) a statement that a prospectus or profile statement for the offer or invitation will be made available when the offer or invitation is made;
- (c) a statement that anyone wishing to acquire the shares or debentures, or units of shares or debentures, will need to make an application in the manner set out in the prospectus or profile statement; and
- (d) a statement of how to arrange to receive a copy of the prospectus or profile statement.

(7) To satisfy subsection (6), the advertisement or publication shall include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the statement referred to in paragraph (d).

(8) After a prospectus or profile statement is registered with the Authority, an advertisement or publication does not contravene subsection (1) if it includes —

- (a) a statement that a prospectus or profile statement in respect of the offer or invitation to subscribe for or purchase shares or debentures, or units of shares or debentures, is available for collection at the times and places specified in the statement; and
- (b) a statement that anyone wishing to acquire the shares or debentures, or units of shares or debentures, will need to make an application in the manner set out in the prospectus or profile statement.

(9) An advertisement or publication does not contravene subsection (1) if it —

- (a) consists solely of a notice or report to a securities exchange or futures exchange by the corporation or one of its officers, about its affairs;
- (b) consists solely of a notice or report of a general meeting of the corporation;
- (c) consists solely of a report about the corporation that is published by the corporation and —
 - (i) does not contain information that materially affects the affairs of the corporation other than information previously made available in a prospectus that has been registered by the Authority, an annual report or a report referred to in paragraph (a) or (b); and
 - (ii) does not refer (directly or indirectly) to the offer or invitation;
- (d) is a news report or a genuine comment, in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating to —
 - (i) a prospectus or a profile statement that has been lodged with the Authority or information contained in such a prospectus or a profile statement; or

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- (ii) a notice or report referred to in paragraph (a), (b) or (c); or
 - (e) is a report about the shares in or debentures of, or units of shares in or debentures of, the corporation published by someone who is not —
 - (i) the corporation;
 - (ii) a director of the corporation;
 - (iii) a person who has an interest in the success of the issue or sale of the shares or debentures, or units of shares or debentures; or
 - (iv) acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i), (ii) or (iii).
 - (10) A person does not contravene subsection (1) if —
 - (a) he publishes any advertisement or publication in the ordinary course of a business of —
 - (i) publishing a newspaper, periodical or magazine; or
 - (ii) broadcasting by radio, television, or any other means of broadcasting or communication; and
 - (b) he did not know and had no reason to suspect that its publication would constitute a contravention of subsection (1).

(11) Subsection (9) (d) and (e) shall not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(12) Any person who contravenes subsection (1) and, in the case of a corporation, every officer or other person, who knowingly authorised or permitted the publication or dissemination, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(13) This section does not affect any liability that a person has under any other law.

(14) The Authority may exempt any person or class of persons from this section, subject to such conditions or restrictions as may be determined by the Authority.

(15) Any person who contravenes any of the conditions or restrictions specified in the order made under subsection (14) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Persons liable on prospectus or profile statement to inform person making offer or invitation about certain deficiencies

252.—(1) A person referred to in section 254 (3) (other than paragraph (a)) shall notify in writing the person making the offer of shares, debentures, or units of shares or debentures, for subscription or purchase, or the invitation to subscribe for or purchase shares, debentures, or units of shares or debentures, as soon as practicable, if he becomes aware during the application period that —

- (a) a statement or matter in the prospectus or the profile statement is false or misleading;
- (b) there is an omission from the prospectus of information required to be included therein under section 243 or 244, where applicable, or from the profile statement of information required to be included therein under section 246; or
- (c) a new circumstance —
 - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
 - (ii) would have been required to be included in the prospectus under section 243 or 244, or to be included in the profile statement under section 246, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

and the failure to so notify would have been materially adverse from the point of view of an investor.

(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.

Criminal liability for false or misleading statements

253.—(1) Where an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe for or purchase

shares in or debentures of, or units of shares in or debentures of, a corporation is made in or is accompanied by a prospectus or profile statement and —

- (a) a false or misleading statement is contained in —
 - (i) the prospectus or the profile statement; or
 - (ii) any application form for the shares or debentures, or units of shares or debentures;
- (b) there is an omission to state any information required to be included in the prospectus under section 243 or 244 or there is an omission to state any information required to be included in the profile statement under section 246, as the case may be; or
- (c) there is an omission to state a new circumstance that —
 - (i) has arisen since the prospectus or the profile statement was lodged with the Authority; and
 - (ii) would have been required to be included in the prospectus under section 243 or 244, or required to be included in the profile statement under section 246, as the case may be, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (4) shall be guilty of an offence even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission, and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person made the statement without having reasonable grounds for making the statement.

(3) A person shall not be taken to have contravened subsection (1) if the false or misleading statement, or the omission to state any information or new circumstance, is not materially adverse from the point of view of the investor.

- (4) The persons guilty of the offence are —
- (a) the person making the offer or invitation;
 - (b) if the offer or invitation is made by a corporation, each director of the corporation;
 - (c) if the offer or invitation is made by a corporation, a person named in the prospectus or the profile statement, with his consent, as a proposed director of the corporation;
 - (d) an underwriter (but not a sub-underwriter) to the issue or sale of the shares or debentures, or units of shares or debentures, named in the prospectus or the profile statement with his consent;
 - (e) a person named in the prospectus or the profile statement with his consent as having made a statement —
 - (i) that is included in the prospectus or the profile statement; or
 - (ii) on which a statement made in the prospectus or the profile statement is based,but only in respect of the inclusion of the statement; and
 - (f) any other person who made the false or misleading statement, or omitted to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance, as the case may be.

(5) Where a prospectus relating to any shares in or debentures of, or any units of shares in or debentures of, a corporation is issued and the prospectus omits to state any matter required to be stated as prescribed by the Authority, each director of the corporation and other person responsible for the prospectus shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Civil liability for false or misleading statements

254.—(1) Where an offer to the public of shares in or debentures of, or units of shares in or debentures of, a corporation for subscription or purchase, or an invitation to the public to subscribe

for or purchase shares in or debentures of, or units of shares in or debentures of, a corporation is made in or accompanied by a prospectus or profile statement and —

- (a) a false or misleading statement or matter is contained in —
 - (i) the prospectus or the profile statement; or
 - (ii) any application form for the shares or debentures, or units of shares or debentures;
- (b) there is an omission to state any information required to be disclosed under section 243 or 244, where applicable, in respect of the prospectus, or under section 246 in respect of the profile statement; or
- (c) there is an omission to state a new circumstance that —
 - (i) has arisen since the prospectus or the profile statement was lodged; and
 - (ii) would have been required by section 243 or 244, where applicable, to be included in the prospectus, or by section 246 to be included in the profile statement, if it had arisen before the prospectus or the profile statement was lodged with the Authority,

the persons referred to in subsection (3) shall be liable to compensate any person who suffers loss or damage as a result of the false or misleading statement in or omission from the prospectus or the profile statement, even if such persons, unless otherwise specified, were not involved in the making of the false or misleading statement or the omission.

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

- (3) The persons liable are —
- (a) the person making the offer or invitation;
 - (b) if the offer or invitation is made by a corporation, each director of the corporation making the offer or invitation;
 - (c) if the offer or invitation is made by a corporation, a person named in the prospectus or the profile statement with his consent as a proposed director of the corporation;

- (d) an underwriter (but not a sub-underwriter) to the issue or sale of the shares or debentures, or units of shares or debentures, named in the prospectus or the profile statement with his consent;
- (e) a person named in the prospectus or the profile statement with his consent as having made a statement —
 - (i) that is included in the prospectus or the profile statement; or
 - (ii) on which a statement made in the prospectus or the profile statement is based,but only in respect of the inclusion of that statement; and
- (f) any other person who made the false or misleading statement or omitted to state the information or circumstance, as the case may be, but only in respect of the inclusion of the statement or the omission to state the information or circumstance.

(4) A person who acquires shares, debentures, or units of shares or debentures as a result of an offer or invitation that was made in or accompanied by a profile statement is taken to have acquired the shares or debentures, or units of shares or debentures, in reliance on both the profile statement and the prospectus for the offer.

(5) No action under subsection (1) shall be commenced after the expiration of 6 years from the date on which the cause of action arose.

(6) This section does not affect any liability that a person has under any other law.

Defences

255.—(1) A person is not liable under section 253 (1) or 254 (1) only because of a false or misleading statement or matter in a prospectus or a profile statement if the person proves that he —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the statement was not false or misleading.

(2) A person is not liable under section 253 (1) or 254 (1) only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person proves that he —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that there was no omission from the prospectus or profile statement in relation to that matter.

(3) A person is not liable under section 253 (1) or 254 (1) only because of a false or misleading statement in, or an omission from, a prospectus or a profile statement if the person proves that he placed reasonable reliance on information given to him by —

- (a) if the person is a corporation, someone other than a director, employee or agent of the corporation; or
- (b) if the person is an individual, someone other than an employee or agent of the individual.

(4) For the purposes of subsection (3), a person is not the agent of a corporation or individual merely because he performs a particular professional or advisory function for the corporation or individual.

(5) A person who is named in a prospectus or a profile statement as —

- (a) a proposed director or underwriter;
- (b) having made a statement included in the prospectus or the profile statement; or
- (c) having made a statement on the basis of which a statement is included in the prospectus or the profile statement,

is not liable under section 253 (1) or 254 (1) only because of a false or misleading statement in, or an omission from, the prospectus or the profile statement if the person proves that he publicly withdrew his consent to being named in the prospectus or the profile statement in that way.

(6) A person is not liable under section 253 (1) or 254 (1) only because of a new circumstance that has arisen since the prospectus or the profile statement was lodged with the Authority if the person proves that he was not aware of the matter.

Abridged prospectus for renounceable rights issues

256.—(1) An offer to the public of shares in or debentures of, or units of shares in or debentures of, a company for subscription or purchase, or an invitation to the public to subscribe for or purchase shares in or debentures of, or units of shares in or debentures of, a

company shall be deemed to be an offer to the public if it is an offer or invitation by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that company and an application has been or will be made for permission to deal with or quote such shares or debentures, or units of shares or debentures, on any securities exchange.

(2) Where subsection (1) applies to any offer or invitation in respect of shares in or debentures of, or units of shares in or debentures of, a company, an abridged prospectus shall be lodged with the Authority containing the prescribed particulars.

(3) Any abridged prospectus lodged under subsection (2) shall be deemed to be a prospectus for the purposes of this Division and all written law and rules of law as to contents of prospectuses (to the extent that may be applicable) and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to an abridged prospectus and have effect accordingly.

(4) Nothing in this section shall be construed as preventing a full prospectus being registered containing the particulars as prescribed by the Authority in respect of an offer or invitation referred to in subsection (1).

Document containing offer of shares or debentures for sale deemed prospectus

257.—(1) Subsection (2) applies where a corporation allots or agrees to allot to any person any shares in or debentures of, or units of any shares in or debentures of, the corporation with a view to all or any of them being offered for sale to the public.

(2) Any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the corporation and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosure in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if —

- (a) the shares, debentures or units of shares or debentures had been offered to the public; and
- (b) persons accepting the offer in respect of any shares, debentures or units of shares or debentures were subscribers therefor,

but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

(3) For the purposes of this Act, it shall, unless the contrary is proved, be sufficient evidence that an allotment of, or an agreement to allot, shares or debentures, or units of shares or debentures was made with a view to the shares or debentures, or units of shares or debentures, being offered for sale to the public if it is shown —

- (a) that an offer of the shares, debentures, units of shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the corporation in respect of the shares, debentures, or units of shares or debentures had not been so received.

(4) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(5) In addition to complying with the other requirements of this Division, the document making the offer shall state —

- (a) the net amount of the consideration received or to be received by the corporation in respect of shares or debentures, or units of shares or debentures, to which the offer relates; and
- (b) the place and time at which a copy of the contract under which the shares or debentures, or units of shares or debentures, have been or are to be allotted may be inspected.

(6) Where an offer to which this section relates is made by a corporation or a firm, it shall be sufficient if the document referred to in subsection (1) is signed on behalf of the corporation or firm by 2 directors of the corporation or not less than half of the members of the firm, as the case may be, and any such director or member may sign by his agent authorised in writing.

Application and moneys to be held by company in trust in separate bank account until allotment

258.—(1) All application and other moneys paid prior to allotment by any applicant on account of shares or debentures, or units of

shares of debentures offered to the public shall, until the allotment of the shares or debentures or units of shares or debentures, be held by the company upon trust for the applicant in a separate bank account, being a bank account that is established and kept by the company solely for the purpose of depositing the application and other moneys that are paid by applicants for those shares or debentures, or units of shares or debentures; but there shall be no obligation or duty on any bank with whom any such moneys have been deposited to enquire into or see to the proper application of those moneys so long as the bank acts in good faith.

(2) If default is made in complying with this section, every officer of the company in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Allotment of shares and debentures where prospectus indicates application to list on securities exchange

259.—(1) Where a prospectus states or implies that application has been or will be made for permission for the shares or debentures, or units of shares or debentures offered thereby to be listed for quotation on the official list of any securities exchange, and —

- (a) the permission is not applied for in the form required by the securities exchange within 3 days from the date of the issue of the prospectus; or
- (b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the securities exchange,

then —

- (i) any allotment whenever made of shares or debentures, or units of shares or debentures, made on an application in pursuance of the prospectus shall, subject to subsection (3), be void; and
- (ii) any person who continues to allot such shares or debentures, or units of shares or debentures, after the period specified in

paragraph (a) or (b), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), the corporation shall, subject to subsection (3), immediately repay without interest all moneys received from applicants in pursuance of the prospectus, and if any such moneys is not repaid within 14 days after the corporation so becomes liable to repay it then, in addition to the liability of the corporation, the directors of the corporation shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of such 14 days.

(3) Where in relation to any shares in or debentures of, or units of shares in or debentures of, a corporation —

(a) permission is not applied for as specified in subsection (1) (a);
or

(b) permission is not granted as specified in subsection (1) (b), the Authority may, on the application of the corporation made before any share or debenture, or unit of share or debenture, is purported to be allotted, exempt the allotment of the shares or debentures, or units of shares or debentures, from the provisions of this section.

(4) A director shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares or debentures, or units of shares or debentures, to waive compliance with any requirement of this section or purporting to do so shall be void.

(6) Without limiting the application of any of its provisions, this section shall have effect —

(a) in relation to any shares or debentures, or units of shares or debentures agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and

- (b) in relation to a prospectus offering shares or units of shares for sale as if —
- (i) a reference to sale were substituted for a reference to allotment;
 - (ii) the persons by whom the offer is made, and not the corporation were liable under subsection (2) to repay money received from applicants, and references to the corporation's liability under that subsection were construed accordingly; and
 - (iii) for the reference in subsection (7) to the corporation and every officer of the corporation who is in default there were substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

(7) All moneys received under this section shall be kept in a separate bank account so long as the corporation may become liable to repay it under subsection (2); and if default is made in complying with this subsection, the corporation and every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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.

(8) Where the securities exchange has within the time specified in subsection (1) (b) granted permission subject to compliance with any requirements specified by the securities exchange, permission shall be deemed to have been granted by the securities exchange if the directors have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.

(9) If any such undertaking referred to in subsection (8) is not complied with, each director who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(10) A person shall not issue a prospectus inviting persons to subscribe for shares in or debentures of, or units of shares in or debentures of, a corporation if it includes —

- (a) a false or misleading statement that permission has been granted for those shares or debentures, or units of shares or debentures, to be dealt in or quoted on any securities exchange; or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting the shares or debentures, or units of shares or debentures, on any securities exchange, or to any requirements of a securities exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the securities exchange within 3 days from the date of the issue of the prospectus or the statement has been approved by the Authority for inclusion in the prospectus.

(11) Any person who contravenes subsection (10) 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.

(12) Where a prospectus contains a statement to the effect that the memorandum and articles of the corporation comply or have been drawn so as to comply with the requirements of any securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the shares or debentures, or units of shares or debentures, to which the prospectus relates to be listed for quotation on the official list of the securities exchange.

Prohibition of allotment unless minimum subscription received

260.—(1) No allotment shall be made of any shares or debentures, or units of shares or debentures of a company offered to the public unless —

- (a) the minimum subscription has been subscribed; and

- (b) the sum payable on application for the shares or debentures, or units of shares or debentures so subscribed has been received by the company,

but if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

- (2) The minimum subscription shall —

- (a) be calculated on the nominal value of each share or debenture, or each unit of share or debenture, and where the shares or debentures, or units of shares or debentures, are issued at a premium, on the nominal value of, and the amount of the premium payable on, each share or debenture, or unit of share or debenture; and

- (b) be reckoned exclusively of any amount payable otherwise than in cash.

(3) The amount payable on application on each share or debenture, or each unit of share or debenture, offered to the public shall not be less than 5% of the nominal value of the share or debenture, or unit of share or debenture.

(4) If the conditions referred to in subsection (1) (a) and (b) have not been satisfied on the expiration of 4 months after the first issue of the prospectus, all moneys received from applicants for shares or debentures, or units of shares or debentures, shall be immediately repaid to them without interest, and, if any such money is not so repaid within 5 months after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months; but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) An allotment made by a company to an applicant in contravention of this section shall be voidable at the option of the applicant which option may be exercised by written notice served on the company within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting within one month after the date of the allotment, and not later, and the

allotment shall be so voidable notwithstanding that the company is in course of being wound up.

(6) Every director of a company who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence and shall be liable in addition to the penalty or punishment for the offence to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee has sustained or incurred thereby; but no proceedings for the recovery of any such compensation shall be commenced after the expiration of 2 years from the date of the allotment.

(7) Any condition requiring or binding any applicant for shares or debentures, or units of shares or debentures, to waive compliance with any requirement of this section shall be void.

Subdivision (3) — Debentures

Preliminary provisions

261.—(1) This Subdivision shall apply where a corporation or any other entity makes to the public an offer of debentures or an invitation to subscribe for or purchase debentures.

(2) In this Subdivision —

“offer in respect of debentures” means an offer of debentures of a corporation or any other entity to the public in Singapore;

“invitation in respect of debentures” means an invitation to the public in Singapore to subscribe for or purchase debentures of a corporation or any other entity.

(3) In this Subdivision, a corporation is related to another corporation if it is deemed to be related to that other corporation by virtue of section 6 of the Companies Act (Cap. 50).

Qualifications of trustee for debenture holders

262.—(1) Subject to this section, every corporation and every other entity which makes an offer or invitation to the public in respect of debentures shall make provision in those debentures or in a trust deed relating to those debentures for the appointment of a trustee corporation as trustee for the holders of the debentures.

(2) Where a borrowing corporation is required to appoint a trustee for the holders of any debentures in accordance with subsection (1), it shall not allot any of those debentures until the appointment has been made and the trustee corporation has consented to act as trustee.

(3) Without leave of the court, a trustee corporation shall not be appointed, hold office or act as trustee for the holders of debentures of a borrowing corporation if that trustee corporation is —

- (a) a shareholder who beneficially holds shares in the borrowing corporation;
- (b) beneficially entitled to moneys owed by the borrowing corporation to it;
- (c) a corporation that has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest thereon; or
- (d) a corporation that is related to —
 - (i) any corporation of a kind referred to in paragraphs (a), (b) and (c); or
 - (ii) the borrowing corporation.

(4) Subsection (3) does not prevent a trustee corporation from being appointed, or from holding office or acting as trustee for the holders of debentures of a borrowing corporation by reason only that —

- (a) the borrowing corporation owes to the trustee corporation or to a corporation related to the trustee corporation any moneys so long as such moneys are —
 - (i) moneys that (not taking into account any moneys referred to in sub-paragraphs (ii) and (iii)) do not, at the time of the appointment or at any time within a period of 3 months after an offer or invitation in respect of the debentures is first made to the public, exceed 10% of the amount of the debentures in respect of which the offer or invitation is proposed to be made to the public within that period and do not, at any time after the expiration of that period, exceed 10% of the amount owed by the borrowing corporation to the holders of the debentures;

-
- (ii) moneys that are secured by, and only by, a first mortgage over land of the borrowing corporation, or by any debentures issued by the borrowing corporation to the public or by any debentures not issued to the public which are issued pursuant to the same trust deed as that creating other debentures issued at any time by the borrowing corporation to the public or by any debentures to which the trustee corporation, or a corporation that is related to the trustee corporation, is not beneficially entitled; or
 - (iii) moneys to which the trustee corporation, or a corporation that is related to the trustee corporation, is entitled as trustee for holders of any debentures of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed; or
- (b) the trustee corporation, or a corporation that is related to the trustee corporation, is a shareholder of the borrowing corporation in respect of shares that it beneficially holds, so long as the shares in the borrowing corporation beneficially held by the trustee corporation and by all other corporations that are related to it, do not carry the right to exercise more than 5% of the voting power at any general meeting of the borrowing corporation.
- (5) Nothing in subsection (3) shall —
- (a) affect the operation of any debenture or trust deed issued or executed before 29th December 1967; or
 - (b) apply to or in relation to the trustee for the holders of any such debentures,

unless pursuant to any such debentures or trust deed a further offer or invitation in respect of debentures is made after that date.

(6) Nothing in this Subdivision shall apply to a prescribed corporation, and a prescribed corporation which makes an offer or invitation in respect of debentures shall not be required to make provision in those debentures or in a trust deed relating to those debentures for the appointment of a trustee corporation as trustee for the holders of the debentures.

(7) Where a prescribed corporation which makes an offer or invitation in respect of debentures, makes provision in those

debentures or in a trust deed relating to those debentures for the appointment of a trustee (whether or not a trustee corporation) for the holders of the debentures, nothing in this Subdivision shall apply to those debentures, the trust deed or the trustee.

(8) For the purposes of subsections (6) and (7), “prescribed corporation” has the same meaning as in section 239 (4).

(9) If default is made in complying with this section, the corporation and every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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.

Retirement of trustees

263.—(1) Notwithstanding anything in any Act or in the relevant debentures or trust deed but subject to section 262 (6) and (7), a trustee for the holders of debentures shall not cease to be the trustee until a corporation qualified under section 262 for appointment as trustee for the holders of the debentures has been appointed to be the trustee for the holders of the debentures and has taken office as such.

(2) Where provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures upon retirement or otherwise, the successor may, subject to section 262, be appointed in accordance with such provision.

(3) Where no provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a retiring trustee, the borrowing corporation may appoint a successor which is qualified for appointment under section 262.

(4) Notwithstanding anything in this Act or the Companies Act (Cap. 50) or in any debentures or trust deed, a borrowing corporation may, with the consent of an existing trustee for the holders of the debentures, appoint as successor to the existing trustee any corporation which is qualified for appointment pursuant to section 262 and which is related to the existing trustee.

(5) Where the trustee for the holders of the debentures has ceased to exist or to be qualified under section 262 or fails or refuses to act or is disqualified under that section, the court may, on the application

of the borrowing corporation or the trustee for the holders of the debentures or the holder of any of the debentures or the Authority, appoint any corporation qualified under section 262 to be the trustee for the holders of the debentures in place of the trustee which has ceased to exist or to be qualified, which has failed or refused to act as trustee, or which is disqualified.

(6) Where a successor is appointed to be a trustee in place of any trustee, the successor shall within one month after the appointment lodge with the Authority notice in the prescribed form of the appointment.

(7) Any person who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$500 for every day or part thereof during which the offence continues after conviction.

Contents of trust deed

264.—(1) Where a corporation or any other entity makes an offer or invitation in respect of debentures for subscription, the debentures or the relevant trust deed shall contain a limitation on the amount that the borrowing corporation may, pursuant to those debentures or that deed, borrow and shall contain covenants by the borrowing corporation, or if the debentures do not or the trust deed does not expressly contain those covenants, they or it shall be deemed to contain covenants by the borrowing corporation, to the following effect:

- (a) that the borrowing corporation will use its best endeavours to carry on and conduct its business in a proper and efficient manner;
- (b) that, to the same extent as if the trustee for the holders of the debentures or any approved company auditor appointed by the trustee were a director of the borrowing corporation or such person of the borrowing corporation as the Authority may approve in writing, the borrowing corporation shall —
 - (i) make available for its or his inspection the whole of the accounting or other records of the borrowing corporation; and

- (ii) give to it or him such information as it or he requires with respect to all matters relating to the accounting or other records of the borrowing corporation; and
- (c) that the borrowing corporation will, on the application of persons holding not less than 10% in nominal value of the issued debentures to which the covenant relates delivered to its registered office, by giving notice —
 - (i) to each of the holders of those debentures (other than debentures payable to bearer) at his address as specified in the register of debentures; and
 - (ii) by an advertisement in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages addressed to all holders of those debentures,

summon a meeting of the holders of those debentures to consider the accounts and balance-sheet which were last lodged with the trustee for the holders of the debentures by the borrowing corporation and to give to the trustee directions in relation to the exercise of the trustee's powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a person nominated by the trustee or such other person as is appointed in that behalf by the holders of those debentures present at the meeting.

(2) Where any debenture (other than a debenture lawfully issued pursuant to a trust deed executed before that date) is issued and neither the debenture nor the trust deed relating to the issue of the debenture expressly contains the limitation on the amount that the borrowing corporation may borrow and the covenants referred to in subsection (1), the corporation that issued the debenture and every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

Power of court in relation to certain irredeemable debentures

265.—(1) Notwithstanding anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the court so orders, be enforceable, forthwith or at such other time as the court directs if, on the application of the trustee for the holders of the

debentures or (where there is no trustee) on the application of any holder of the debentures, the court is satisfied that —

- (a) at the time of the issue of the debentures the assets of the borrowing corporation which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking *pari passu* if any); and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

Duties of trustees

266.—(1) A trustee for the holders of debentures —

- (a) shall exercise reasonable diligence to ascertain whether or not the assets of the borrowing corporation and of each of its guarantor corporations which are or may be available, whether by way of security or otherwise, are sufficient or are likely to be or become sufficient to discharge the principal debt as and when it becomes due;
- (b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter which is inconsistent with the terms of the debentures or with the relevant trust deed;

- (c) shall ensure that the borrowing corporation complies with Division 8 of Part IV of the Companies Act (Cap. 50) so far as it relates to the debentures and is applicable;
- (d) shall exercise reasonable diligence to ascertain whether or not the borrowing corporation and each of its guarantor corporations have committed any breach of the covenants, terms and provisions of the debentures or the trust deed;
- (e) except where it is satisfied that the breach will not materially prejudice the security, if any, for the debentures or the interests of the holders of the debentures, shall take all steps and do all such things as it is empowered to do to cause the borrowing corporation and any of its guarantor corporations to remedy any breach of those covenants, terms and provisions;
- (f) where the borrowing corporation or any of its guarantor corporations fails when so required by the trustee to remedy any breach of the covenants, terms and provisions of the debentures or the trust deed, may place the matter before a meeting of holders of the debentures, submit such proposals for the protection of their investment as the trustee considers necessary or appropriate and obtain the directions of the holders in relation thereto; and
- (g) where the borrowing corporation submits to those holders a compromise or arrangement, shall give to them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation thereto.

(2) Where, after due inquiry, the trustee for the holders of the debentures at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations which are or should be available whether by way of security or otherwise, are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Authority for an order under this subsection.

(3) The Authority, on such application —

- (a) after giving the borrowing corporation an opportunity of making representations in relation to that application, by order in writing served on the corporation at its registered office in Singapore, may impose such restrictions on the

activities of the borrowing corporation, including restrictions on advertising for deposits or loans and on borrowing by the corporation as the Authority thinks necessary for the protection of the interests of the holders of the debentures; or

- (b) may, and if the borrowing corporation so requires, shall direct the trustee to apply to the court for an order under subsection (5); and the trustee shall apply accordingly.

(4) Where —

- (a) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or
- (b) the borrowing corporation has contravened an order made by the Authority under subsection (2),

the trustee may, and where the borrowing corporation has requested the trustee to do so, shall apply to the court for an order under subsection (5).

(5) Where an application is made to the court under subsection (3) or (4), the court may, after giving the borrowing corporation an opportunity to be heard, by order, do all or any of the following things:

- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate, and of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the court thinks fit;
- (b) stay all or any actions or proceedings before any court by or against the borrowing corporation;
- (c) restrain the payment of any moneys by the borrowing corporation to the holders of debentures of the borrowing corporation or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security, if any, for the debentures;

- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing corporation or any of its guarantor corporations or the public,

but in making any such order the court shall have regard to the rights of all creditors of the borrowing corporation.

(6) The court may vary or rescind any order made under subsection (5) as the court thinks fit.

(7) A trustee in making any application to the Authority or to the court shall have regard to the nature and kind of the security given when the offer or invitation in respect of the debentures was made to the public, and if no security was given shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing corporation.

(8) A trustee may rely upon any certificate or report given or statement made by any advocate and solicitor, auditor or officer of the borrowing corporation or guarantor corporation if it has reasonable grounds for believing that such advocate and solicitor, auditor or officer was competent to give or make the certificate, report or statement.

Powers of trustee to apply to court for directions, etc.

267.—(1) A trustee for the holders of debentures may apply to the court —

- (a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or
(b) to determine any question in relation to the interests of the holders of debentures.

(2) The court may —

- (a) give such directions to the trustee as the court thinks fit; and
(b) if satisfied that the determination of the question will be just and beneficial, accede wholly or partially to any such application on such terms and conditions as the court thinks fit or make such other order on the application as the court thinks just.

(3) The court may, on an application under this section, order a meeting of all or any of the holders of debentures to be called to consider any matters in which they are concerned and to advise the

trustee on those matters and may give such ancillary or consequential directions as the court thinks fit.

(4) The meeting shall be held and conducted in such manner as the court directs, under the chairmanship of a person nominated by the trustee or such other person as the meeting appoints.

Obligations of borrowing corporation

268.—(1) Where there is a trustee for the holders of any debentures of a borrowing corporation, the directors of the borrowing corporation shall —

- (a) at the end of a period not exceeding 3 months ending on a day (being a day after the date of the issue of the relevant prospectus) which the trustee is hereby required to notify the borrowing corporation in writing; and
- (b) at the end of each succeeding period thereafter, being a period of 3 months or such shorter time as the trustee may, in any special circumstances allow,

prepare a report that relates to that period and complies with the requirements of subsection (2) and within one month after the end of each such period lodge a copy of the report relating to that period with the Authority and with the trustee.

(2) The report referred to in subsection (1) shall be signed by not less than 2 of the directors on behalf of all of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of subsection (1), shall state —

- (a) whether or not the limitations on the amount that the corporation may borrow have been exceeded;
- (b) whether or not the borrowing corporation and each of its guarantor corporations have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;
- (c) whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;
- (d) whether or not any circumstances affecting the borrowing corporation, its subsidiaries or its guarantor corporations or

any of them have occurred which materially affect any security or charge included in or created by the debentures or any trust deed and, if so, particulars of those circumstances;

- (e) whether or not there has been any substantial change in the nature of the business of the borrowing corporation or any of its subsidiaries or any of its guarantor corporations since the debentures were first issued to the public which has not previously been reported upon as required by this section and, if so, particulars of that change; and
- (f) where the borrowing corporation has deposited money with or lent money to or assumed any liability of a corporation which is related to the borrowing corporation, particulars of —
 - (i) the total amounts so deposited or loaned and the extent of any liability so assumed during the period covered by the report; and
 - (ii) the total amounts owing to the borrowing corporation in respect of money so deposited or loaned and the extent of any liability so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liabilities which are secured and those which are unsecured, but not including any deposit with or loan to or any liability assumed on behalf of a corporation if that corporation has guaranteed the repayment of the debentures of the borrowing corporation and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the borrowing corporation.

(3) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

(4) Where there is a trustee for the holders of any debentures issued by a borrowing corporation, the borrowing corporation and each of its guarantor corporations which has guaranteed the repayment of the moneys raised by the issue of those debentures shall, whether or not any demand therefor has been made —

- (a) in writing furnish the trustee, within 21 days after the creation of the charge, with the particulars of any charge

created by the corporation or the guarantor corporation, as the case requires; and

- (b) when the amount to be advanced on the security of the charge is indeterminate, in writing furnish the trustee, within 7 days after the advance, with particulars of the amount or amounts in fact advanced.

(5) Where any such advance referred to in subsection (4) (b) is merged in a current account with bankers or trade creditors, it shall be sufficient for particulars of the net amount outstanding in respect of any such advance to be furnished every 3 months.

(6) The directors of every borrowing corporation and of every guarantor corporation shall cause to be made out and lodged with the Authority and with the trustee for the holders of the debentures, if any —

- (a) a profit and loss account for the first 6 months of every financial year of the corporation and a balance-sheet as at the end of that period, not later than 3 months after the expiration of the period of 6 months; and
- (b) a profit and loss account for every financial year of the corporation and a balance-sheet as at the end of that period, not later than 5 months after the expiration of that financial year.

(7) Any person who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(8) Section 201 (4) to (7) and (11) to (16) and section 207 (1), (2) and (7) of the Companies Act (Cap. 50), shall, with such adaptations as are necessary, be applicable to every profit and loss account and balance-sheet made out and lodged under subsection (6) as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections.

(9) Where —

- (a) the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by subsection (1); or

- (b) the directors of a borrowing corporation or the directors of a guarantor corporation do not lodge with the trustee the balance-sheets and profit and loss accounts as required by subsection (6) within the time prescribed,

the trustee shall forthwith lodge notice of that fact with the Authority.

(10) Notwithstanding anything in subsection (8), a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation required to be made out and lodged in accordance with subsection (6) —

(a) need not be audited; or

(b) the audit thereof may be of a limited nature or extent,

if the trustee for the holders of the debentures of the borrowing corporation has, by notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

(11) Where the trustee has by notice in writing given his consent under subsection (10), the directors of the borrowing corporation, or the directors of the guarantor corporation, in respect of whose profit and loss account and balance-sheet the notice was given, shall lodge with the Authority a copy of the notice at the time when the profit and loss account and balance-sheet to which the notice relates are lodged with the Authority.

(12) Notwithstanding anything in this section, a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation required to be made out and lodged in accordance with subsection (6) may, unless the trustee for the holders of the debentures of the borrowing corporation otherwise requires in writing, be based upon the value of the stock in trade of the borrowing corporation or the guarantor corporation, as the case may be, as reasonably estimated by the directors of the borrowing corporation or guarantor corporation.

(13) The estimation of the directors referred to in subsection (12) shall be made on the basis of the values of such stock in trade as adopted for the purpose of the profit and loss account and balance-sheet of that corporation laid before the corporation at its last preceding annual general meeting and certified in writing by the directors as such.

(14) In this section, a reference to a director of a borrowing corporation, in a case where the borrowing corporation is not a corporation, shall be read as a reference to such person of the borrowing corporation as the Authority may approve by notice in writing.

Obligation of guarantor corporation to furnish information

269.—(1) For the purpose of the preparation of a report that, by this Subdivision, is required to be signed by or on behalf of the directors, or persons approved by the Authority, of a borrowing corporation or any of them, that borrowing corporation may approve, may, by notice in writing, require any of its guarantor corporations to furnish it with any information relating to that guarantor corporation which is, by this Subdivision, required to be contained in that report; and that guarantor corporation shall furnish the borrowing corporation with that information before such date, being a date not earlier than 14 days after the notice is given, as may be specified in that behalf in the notice.

(2) A guarantor corporation which fails to comply with a requirement contained in a notice given under subsection (1) and every officer of that corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

Loans and deposits to be immediately repayable on certain events

270.—(1) Where there is, in any prospectus issued in connection with an offer or invitation in respect of debentures, a statement as to any particular purpose or project for which the moneys received by the borrowing corporation in response to the invitation are to be applied, the borrowing corporation shall from time to time make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving such purpose or completing such project.

(2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under section 268 (1).

(3) When it appears to the trustee for the holders of the debentures that such purpose or project has not been achieved or completed —

- (a) within the time stated in the prospectus within which the purpose or project is to be achieved or completed; or
 - (b) where no such time was stated, within a reasonable time,
- the trustee may and, if in his opinion it is necessary for the protection of the interests of the holders of the debentures, shall give notice in writing to the borrowing corporation requiring it to repay the moneys so received by the borrowing corporation and, within one month after such notice is given, lodge with the Authority a copy thereof.

(4) The trustee shall not give notice under subsection (3) if he is satisfied —

- (a) that the purpose or project has been substantially achieved or completed;
- (b) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or
- (c) that the failure to achieve the purpose or project was due to circumstances beyond the control of the borrowing corporation that could not reasonably have been foreseen by the borrowing corporation at the time that the prospectus was issued.

(5) Upon receipt by the borrowing corporation of a notice referred to in subsection (3), the borrowing corporation shall be liable to repay, and on demand in writing by a person entitled thereto shall immediately repay to him any moneys owing to him as the result of a loan or deposit made in response to the invitation unless —

- (a) before the moneys were accepted by the borrowing corporation, the borrowing corporation had given notice in writing to the persons from whom the moneys were received specifying the purpose or project for which the moneys would in fact be used and the moneys were accepted by the borrowing corporation accordingly; or

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- (b) the borrowing corporation by notice in writing served on the holders of the debentures —
- (i) had specified the purpose or project for which the moneys would in fact be applied by the borrowing corporation; and
 - (ii) had offered to repay the moneys to the holders of the debentures, and that person had not within 14 days after the receipt of the notice, or such longer time as was specified in the notice, in writing demanded from the borrowing corporation repayment of the money.

(6) Where the borrowing corporation has given a notice in writing as provided in subsection (5), specifying the purpose or project for which the moneys will in fact be applied by the borrowing corporation, this section shall apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

Liability of trustees for debenture holders

271.—(1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee.

- (2) Subsection (1) shall not invalidate —
- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
 - (b) any provision enabling such a release to be given —
 - (i) on the agreement thereto of a majority of not less than three fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on his ceasing to act.

(3) Subsection (1) shall not operate —

- (a) to invalidate any provision in force on 29th December 1967 so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or
- (b) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

Subdivision (4) — Exemptions

Interpretation of this Subdivision

272. In this Subdivision —

- (a) a reference to a recognised securities exchange is a reference to a corporation declared by the Authority, by order in the *Gazette*, as a recognised securities exchange;
- (b) a reference to an offer in respect of shares, debentures or units of shares or debentures is a reference to an offer to the public in Singapore of shares in, debentures of, or units of shares in or debentures of, a corporation for subscription or purchase;
- (c) a reference to an invitation in respect of shares, debentures or units of shares or debentures is a reference to an invitation to the public in Singapore to subscribe for or purchase shares in, debentures of, or units of shares in or debentures of, a corporation; and
- (d) a reference to the issuer of shares or debentures or units of shares or debentures is a reference to —
 - (i) in the case of shares or units of shares, a corporation which issues or proposes to issue those shares, or units of shares; or
 - (ii) in the case of debentures or units of debentures, a corporation or any other entity which issues or proposes to issue those debentures or units of debentures.

Offer or invitation made under certain circumstances

273.—(1) Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of shares, debentures or units of shares or debentures, if it is —

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- (a) made in connection with a take-over offer which is in compliance with the Take-over Code;
 - (b) made —
 - (i) in the case of an offer or invitation in respect of shares or debentures, in relation to shares or debentures; or
 - (ii) in the case of an offer or invitation in respect of units of shares or debentures, in relation to units of shares or debentures,

that have been previously issued and that are quoted or listed for quotation on a securities exchange; or

- (c) made, whether or not in relation to shares or debentures, or units of shares or debentures, that have been previously issued, by a corporation to employees of the corporation or its related corporation, where the shares or debentures or units of shares or debentures are to be held by or for the benefit of the employees in accordance with an employee share investment offer or scheme (including a share option offer or scheme) for the time being in force, if —
 - (i) the employees are not induced to purchase the shares or debentures, or units of shares or debentures, by an expectation of employment or continued employment; and
 - (ii) no selling or promotional expenses are paid or incurred in connection with the offer or scheme, other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities.

(2) For the avoidance of doubt, nothing in subsection (1) (c) shall be construed to make an offer or invitation by a corporation to employees of the corporation or its related corporation in respect of any of its shares or debentures, or units of its shares or debentures, an offer or invitation to the public by reason only that such offer or invitation is made to the employees of the corporation or its related corporation.

(3) Where, on the application of any person interested, the Authority declares, by order, that circumstances exist whereby —

- (a) the cost of providing a prospectus for an offer or invitation in respect of shares, debentures or units of shares or debentures outweighs the resulting protection to investors; or
- (b) it would not be prejudicial to the public interest if a prospectus were dispensed with for an offer or invitation in respect of shares, debentures or units of shares or debentures,

Subdivisions (2) and (3) of this Division shall not apply to a person making such an offer or invitation to the public for a period of 6 months from the date of the order.

(4) The Authority may, on making an order referred to in subsection (3), impose such conditions or restrictions on the offer or invitation as it considers appropriate.

(5) An order made under subsection (3) shall be final.

Offer or invitation made to certain institutions or persons

274. Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of shares, debentures, or units of shares or debentures, whether or not they have been previously issued, made to —

- (a) a bank that is licensed under the Banking Act (Cap. 19) or a merchant bank that is approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
- (b) an insurance company that is registered under the Insurance Act (Cap. 142) or a trust company registered under the Trust Companies Act (Cap. 336);
- (c) the Government or a statutory body;
- (d) the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities;
- (e) the holder of a capital markets services licence for fund management;
- (f) a pension fund or collective investment scheme;
- (g) an investment company as defined in section 355 (1) of the Companies Act (Cap. 50);
- (h) a licensed financial adviser under the Financial Advisers Act 2001 or exempted under that Act from obtaining such a licence; and

- (i) such other person who, pursuant to the offer or invitation acquires the shares, debentures, or units of shares or debentures, as principal or as a trustee for accounts fully managed by it and who has been declared by the Authority as an exempt purchaser or is within a class of persons declared by the Authority as exempt purchasers.

Offer or invitation made to sophisticated investors

275.—(1) Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of shares, debentures or units of shares or debentures, whether or not they have been previously issued, where the offer or invitation is made to a sophisticated investor, if —

- (a) the offer or invitation is not accompanied by an advertisement making an offer or invitation or calling attention to the offer or invitation, or intended offer or invitation; and
- (b) no selling or promotional expenses are paid or incurred in connection with the offer or invitation other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities.

(2) In this section —

“advertisement” means —

- (a) a written or printed communication;
- (b) a communication by radio, television or other medium of communication; or
- (c) a communication by means of a recorded telephone message,

that is published in connection with an offer or invitation in respect of shares, debentures or units of shares or debentures, but does not include —

- (i) an information memorandum; or
- (ii) an announcement made by a company listed on a securities exchange or a recognised securities exchange pursuant to any requirement of that securities exchange;

“information memorandum” means a document lodged with the Authority —

- (a) purporting to describe the business and affairs of the person making the offer or invitation; and
- (b) purporting to have been prepared for delivery to and review by sophisticated investors so as to assist them in making an investment decision in respect of the shares or debentures, or units of shares or debentures, which are the subject of an offer or invitation;

“sophisticated investor” means —

- (a) a person who acquires shares or debentures or units of shares or debentures pursuant to the offer or invitation in question, as principal if the aggregate consideration for the acquisition is not less than \$200,000 (or its equivalent in a foreign currency) for each transaction whether such amount is paid for in cash, by exchange of shares or other assets; or
- (b) a person who acquires shares, debentures, or units of shares or debentures pursuant to the offer or invitation in question as principal and —
 - (i) whose total net personal assets exceed \$2 million (or its equivalent in a foreign currency) or whose income in the preceding 12 months is not less than \$300,000 (or its equivalent in a foreign currency) at the time of the acquisition; or
 - (ii) in the case of a corporation, whose total net assets exceed \$10 million in value (or its equivalent in a foreign currency) as determined by the last audited balance-sheet of the corporation; or
- (c) an officer of the person making the offer or invitation or a spouse, parent, brother, sister, son or daughter of that officer or of the person making the offer or invitation, if he is a natural person.

(3) Notwithstanding any requirement in section 99 or any regulation made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires shares in or

debentures of, or units of shares in or debentures of, a corporation under section 274 or this section for his own account shall be considered an exempt person even though he does not comply with that requirement.

(4) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in paragraph (a) or (b) in the definition of “sophisticated investor” in subsection (2).

Circumstances in which a prospectus is not required on first sale of shares or debentures acquired under exemptions in section 274 or 275

276.—(1) Where shares in or debentures of, or units of shares in or debentures of, a corporation initially acquired under an exemption in section 274 or 275, are first sold to any of the persons specified in either of those sections —

- (a) the offer for sale of, or invitation to purchase, those shares, debentures or units of shares or debentures made to any of those persons shall not be regarded as an offer or invitation to the public in respect of shares, debentures or units of shares or debentures; and
- (b) any subsequent offer for sale of, or invitation to purchase, those shares, debentures or units of shares or debentures made to any of those persons shall not be regarded as an offer or invitation to the public in respect of shares, debentures, or units of shares or debentures.

(2) Where shares in or debentures of, or units of shares in or debentures of, a corporation initially acquired pursuant to an exemption in section 274 or 275, are first sold to any person other than those specified in either of those sections, the offer for sale of, or invitation to purchase, those shares, debentures or units of shares or debentures made to that person shall be regarded as an offer or invitation to the public in respect of shares, debentures or units of shares or debentures, except in a case referred to in subsection (3).

(3) Subsection (2) shall not apply if the shares, debentures, or units of shares or debentures, to which the offer or invitation relates are listed for quotation or quoted on a securities exchange or a recognised securities exchange, and at least 6 months have elapsed from the date that they were initially acquired pursuant to the exemption under section 274 or 275.

(4) In a case referred to in subsection (3), any subsequent offer to sell to, or invitation to any person to purchase, the listed shares or debentures, or units of shares or debentures, after the expiration of the 6-month period, shall not require a prospectus.

Securities exchange offer or invitation

277.—(1) Where —

- (a) shares, debentures, or units of shares or debentures, have not been previously issued and are, or are to be, uniform in all respects with shares or debentures, or units of shares or debentures, previously issued and listed for quotation on a securities exchange; and
- (b) a statement of material facts, which complies with such form and content as prescribed by the Authority, is lodged with the Authority and the securities exchange,

Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of the first-mentioned shares, debentures, or units of shares or debentures, to the public for a period of 6 months from the date of lodgment of the statement of material facts with the Authority.

(2) For the purposes of this section —

- (a) shares shall be deemed to be uniform in all respects with shares previously issued notwithstanding that they do not carry the same rights to dividends as the latter during the 12 months immediately following the issue; and
- (b) a statement of material facts referred to in subsection (1) shall be deemed to be a prospectus for the purposes of sections 253 and 254.

Offer or invitation in respect of international debentures

278.—(1) Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation in respect of debentures, or units of debentures, by a body incorporated in a country outside Singapore where the offer or invitation is made by the holder of a capital markets services licence to deal in securities or an exempt person under section 99 (1) (a) or (b), to such institutional, professional or business investors as the Authority may, by order in the *Gazette*, specify, being persons or bodies that appear to the Authority to have sufficient expertise to understand any risk involved in buying or

selling those debentures, or units of debentures (whether as principal or agent) and the offer or invitation complies with the conditions set forth in subsection (2).

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

- (a) the debentures, or units of debentures, are denominated in a currency, other than the Singapore dollar, and each debenture, or each unit of debenture, has a face value of at least US\$5,000 or its equivalent in another currency; and
- (b) the shares of the issuing corporation are listed on a recognised securities exchange or the offer or invitation is guaranteed by a corporation whose shares are listed on a recognised securities exchange.

(3) The Authority may by order in the *Gazette* add to, vary or amend the conditions specified in subsection (2).

Offer or invitation in respect of debentures made by Government or international financial institutions

279. Subdivisions (2) and (3) of this Division shall not apply to an offer or invitation to the public in respect of debentures, or units of debentures, made by or guaranteed by —

- (a) the Government; or
- (b) an international financial institution in which Singapore holds membership of any class or description, whether or not it holds any share in the share capital of that institution.

Reporting requirements

280.—(1) Where an issuer intends to invoke an exemption under this Subdivision other than an exemption under section 273 (1), 276 or 277, he shall lodge with the Authority a report of his intention to issue the shares or debentures, or units of shares or debentures, in such form as may be prescribed at or before the time of invoking the exemption.

(2) An issuer, if incorporated in Singapore, shall maintain a register in the prescribed form of the shares or debentures, or units of shares or debentures, issued under an exemption under this Subdivision other than an exemption under section 273 (1), 276 or 277.

(3) Particulars of the issue of the shares or debentures, or units of shares or debentures, shall be entered in the register within 3 days of the issue.

(4) Upon the request of the Authority, the issuer shall produce for inspection the register maintained under subsection (2) and the Authority may make extracts from the register.

(5) The Authority may supply a copy of an extract from a register to any person who, in its opinion, should, in the public interest, be informed of the issue of the shares or debentures, or units of shares or debentures, disclosed in the register.

Revocation of exemption

281.—(1) Where the Authority considers that the person is contravening, or is likely to contravene, or has contravened any condition or restriction imposed under section 273 (4), or it is necessary in the public interest or for the protection of investors, it may revoke any exemption under this Subdivision, subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation shall remain in effect unless it is withdrawn by the Authority.

(3) A revocation made under this section shall be final and conclusive and there shall be no appeal therefrom.

Transactions under exempted offers or invitations subject to Division 2 of Part XII of the Companies Act and Part XII of this Act

282. For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer or invitation under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division 2 of Part XII of the Companies Act (Cap. 50) or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

*Division 2 — Collective Investment Schemes**Subdivision (1) — Interpretation***Interpretation of this Division**

283.—(1) In this Division, unless the context otherwise requires —

“profile statement” means a profile statement referred to in section 296 (2);

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase, any units in a collective investment scheme or proposed collective investment scheme, but does not include —

(a) a profile statement; or

(b) any material, advertisement or publication which is authorised by section 300 (other than subsection (3)), and which complies with such requirements as may be prescribed under section 300 (1);

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

(a) in the case of a scheme which is authorised under section 286, the manager for the scheme;

(b) in the case of a scheme which is recognised under section 287 —

(i) where the scheme is constituted as a corporation, the corporation;

(ii) where the scheme is not constituted as a corporation, the manager for the scheme;

“replacement document” means a replacement prospectus or a replacement profile statement referred to in section 298 (1), as the case may be;

“supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 298 (1), as the case may be;

“unit trust” means a collective investment scheme under which the property is held on trust for the participants.

(2) For the purposes of this Division, a statement shall be deemed to be included in a prospectus or profile statement if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(3) Any reference in this Division to making an offer of units in a collective investment scheme to the public for subscription or purchase or to making an invitation to the public to subscribe for or purchase units in a collective investment scheme shall, unless the contrary intention appears, include a reference to —

- (a) making an offer of units in a collective investment scheme to any section of the public for subscription or purchase or to making an invitation to any section of the public to subscribe for or purchase units in a collective investment scheme, as the case may be, whether by selection as customers of the person making the offer or the invitation or in any other manner; and
- (b) inviting applications from any section of the public to subscribe for or purchase units in a collective investment scheme.

Code on Collective Investment Schemes

284.—(1) For the more effective administration, supervision and control of collective investment schemes, the Authority shall, under section 321, issue a code, to be known as the Code on Collective Investment Schemes.

(2) The Authority may from time to time revise the Code on Collective Investment Schemes by deleting, amending or adding to the provisions thereof.

(3) The Code on Collective Investment Schemes shall be deemed not to be subsidiary legislation.

Subdivision (2) — Authorisation and Recognition

Offers to the public

285.—(1) No person shall make an offer of units in a collective investment scheme to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, if the collective investment scheme has not been authorised under section 286 or recognised under section 287.

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

Authorised schemes

286.—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2) and the conditions specified in subsection (3), authorise a collective investment scheme constituted in Singapore.

(2) The Authority may authorise, under subsection (1), a collective investment scheme which is constituted as a unit trust if and only if the Authority is satisfied that —

- (a) there is a manager for the scheme which satisfies the requirements in subsection (3);
- (b) there is a trustee for the scheme approved under section 289;
- (c) there is a trust deed in respect of the scheme entered into by the manager and the trustee for the scheme that complies with prescribed requirements; and
- (d) the scheme, the manager for the scheme and the trustee for the scheme comply with this Act and the Code on Collective Investment Schemes.

(3) It shall be a condition for the authorisation of a collective investment scheme under subsection (1) that —

- (a) the manager for the scheme is —
 - (i) the holder of a capital markets services licence for fund management or a person exempted under section 99 (1) (a), (b), (c) or (d) in respect of fund management; or
 - (ii) a public company which does not carry on business in fund management or is specified in the Third Schedule or is exempted under section 99 (1) (e), (f), (g) or (h) in respect of fund management; and

(b) the manager for the scheme is a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —

- (i) any person who is or will be employed by or associated with the manager;
- (ii) any director of the manager;
- (iii) any person exercising influence over the manager;
- (iv) any related corporation of the manager;
- (v) any director of such corporation; or
- (vi) any person exercising influence over such corporation.

(4) The Authority may authorise, under subsection (1), a collective investment scheme which is not constituted as a unit trust if and only if the Authority is satisfied that the scheme and the manager for the scheme comply with such requirements as may be prescribed.

(5) The Authority may refuse to authorise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(6) The Authority shall not refuse to authorise a collective investment scheme under subsection (1) without giving the person who made the application an opportunity to be heard except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to authorise the collective investment scheme on the basis of any of the following circumstances:

- (a) the responsible person is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
- (b) execution against the responsible person in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the responsible person;
- (d) the responsible person has entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation.

(7) Any person who is aggrieved by the refusal of the Authority to authorise a collective investment scheme under subsection (1) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

(8) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(9) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme authorised under subsection (1).

(10) The responsible person for a collective investment scheme authorised under subsection (1) and the trustee for the scheme, to the extent applicable, shall ensure that the requirements set out in subsections (2), (3) and (4) as applicable to that scheme shall continue to be satisfied.

(11) Notwithstanding subsection (10), a failure by any person to comply with the Code on Collective Investment Schemes shall not of itself render that person liable to criminal proceedings but such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(12) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may, in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(13) The responsible person for a collective investment scheme which is authorised under subsection (1) shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(14) Where the manager for a collective investment scheme which is constituted as a unit trust and authorised under subsection (1) fails to comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the trustee for the scheme to remove that person and appoint a new manager for the scheme.

(15) Any person who contravenes subsection (10) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Recognised schemes

287.—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed and subject to subsection (2) and the conditions specified in subsection (3), recognise a collective investment scheme constituted outside Singapore.

(2) The Authority may recognise a collective investment scheme under subsection (1) if and only if the Authority is satisfied that —

- (a) the laws and practices of the jurisdictions under which the scheme is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them by or under this Division in the case of comparable authorised schemes;
- (b) in the case of a scheme which is constituted as a corporation, the corporation is a foreign company registered under Part XI, Division 2 of the Companies Act (Cap. 50);
- (c) there is a manager for the scheme which satisfies the requirements in subsection (3);
- (d) there is a representative for the scheme who is an individual resident in Singapore for the purposes set out in subsection (13);
- (e) the Authority has been furnished with information regarding the situation of the registered office of the foreign company or company referred to in paragraph (b) or subsection (3) (c), as may be applicable, the name and contact particulars of the representative referred to in paragraph (d) and such other information as the Authority may prescribe; and
- (f) the scheme, the manager for the scheme and the trustee for the scheme, where applicable, comply with this Act and the Code on Collective Investment Schemes.

(3) It shall be a condition for the recognition of a collective investment scheme under subsection (1) that the manager for the scheme is —

- (a) licensed or regulated in the jurisdiction of its principal place of business;
- (b) a fit and proper person, in the opinion of the Authority, and in considering if a person satisfies this requirement, the Authority may take into account any matter relating to —

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- (i) any person who is or will be employed by or associated with the manager;
 - (ii) any director of the manager;
 - (iii) any person exercising influence over the manager;
 - (iv) any related corporation of the manager;
 - (v) any director of such corporation; or
 - (vi) any person exercising influence over such corporation; and
- (c) in the case of a scheme which is not constituted as a corporation —
- (i) a foreign company which is registered under Part XI, Division 2 of the Companies Act (Cap. 50);
 - (ii) the holder of a capital markets services licence for fund management or a person exempted under section 99 (1) (a), (b), (c) or (d) in respect of fund management; or
 - (iii) a public company which does not carry on business in fund management or is specified in the Third Schedule or is exempted under section 99 (1) (e), (f), (g) or (h) in respect of fund management.

(4) The Authority may refuse to recognise any collective investment scheme under subsection (1) where it appears to the Authority that it is not in the public interest to do so.

(5) The Authority shall not refuse to recognise a collective investment scheme under subsection (1) without giving the person who made the application an opportunity to be heard except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to recognise the collective investment scheme on the basis of any of the following circumstances:

- (a) the responsible person is in the course of being wound up or otherwise dissolved whether in Singapore or elsewhere;
- (b) execution against the responsible person in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore

or elsewhere, in relation to or in respect of any property of the responsible person;

- (d) the responsible person has entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation.

(6) Any person who is aggrieved by the refusal of the Authority to recognise a collective investment scheme under subsection (1) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

(7) An application made under subsection (1) shall be accompanied by such information or record as the Authority may require.

(8) The Authority may publish for public information, in such manner as it considers appropriate, particulars of any collective investment scheme recognised under subsection (1).

(9) The responsible person for a collective investment scheme recognised under subsection (1) shall ensure that the requirements set out in subsections (2) and (3), as applicable to that scheme, shall continue to be satisfied.

(10) Notwithstanding subsection (9), a failure by any person to comply with the Code on Collective Investment Schemes shall not of itself render that person liable to criminal proceedings but may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(11) If any person fails to comply with the Code on Collective Investment Schemes, the Authority may in addition to, or as an alternative to any action under section 288, take such other action as it deems fit.

(12) The responsible person for a collective investment scheme which is recognised under subsection (1) shall furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act.

(13) The representative for a collective investment scheme which is recognised under subsection (1) shall carry out, or procure the carrying out of the following functions:

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- (a) facilitate —
- (i) the issuing and redeeming of units in the collective investment scheme;
 - (ii) the publishing of sale and purchase prices of units in the collective investment scheme;
 - (iii) the sending of reports of the scheme to participants;
 - (iv) the furnishing of such books relating to the sale and redemption of units as the Authority may require; and
 - (v) the inspection of the instruments constituting the scheme;
- (b) either maintain for inspection in Singapore a subsidiary register of participants who subscribed for or purchased their units in Singapore, or maintain in Singapore any facility that enables the inspection or extraction of the equivalent information;
- (c) within 14 days after any change in the particulars referred to in subsection (2) (e), give notice in writing of such change to the Authority;
- (d) furnish such information or record regarding the scheme as the Authority may, at any time, require for the proper administration of this Act; and
- (e) such other functions as the Authority may prescribe.

(14) Any person who contravenes subsection (9), (12) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Revocation, suspension or withdrawal of authorisation or recognition

288.—(1) The Authority may revoke the authorisation of a collective investment scheme granted under section 286 or the recognition of a collective investment scheme granted under section 287 if —

- (a) the application for authorisation or recognition, or any related information or record submitted to the Authority whether at the same time as or subsequent to the application, was false or misleading in a material particular

or omitted a material particular which, had it been known to the Authority at the time of submission, would have resulted in the Authority not granting the authorisation or recognition;

- (b) the Authority is of the opinion that the continued authorisation or recognition of the scheme is or will be prejudicial to its participants or potential participants; or
- (c) in the case of —
 - (i) a scheme authorised under section 286, the responsible person for the scheme or the trustee for the scheme, where applicable, fails to comply with section 286 (10) or (13); or
 - (ii) a scheme recognised under section 287, the responsible person for the scheme or the representative for the scheme, where applicable, fails to comply with section 287 (9), (12) or (13).

(2) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1), the Authority may issue such directions as it deems fit to the responsible person for the scheme, including a direction that he —

- (a) refund all moneys contributed by the participants of the scheme; or
- (b) provide the participants with an option, on such terms as the Authority may approve, to obtain from him a refund of all moneys contributed by them or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2), the Authority shall consider whether the responsible person for the collective investment scheme is able to liquidate the property of the scheme without material adverse financial effect to the participants, and for this purpose, the factors which the Authority may take into account include —

- (a) whether a significant amount of the moneys contributed by the participants has been invested;
- (b) the liquidity of the property of the collective investment scheme; and
- (c) the penalties, if any, payable for liquidating the property.

(4) A responsible person who contravenes any of the directions issued by the Authority to him under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(5) Notwithstanding subsection (1), the Authority may, if it considers it desirable to do so, instead of revoking the authorisation or recognition of a collective investment scheme, suspend the authorisation or recognition of that collective investment scheme for a specific period, and may at any time remove such suspension.

(6) Where the Authority revokes the authorisation or recognition of a collective investment scheme under subsection (1) or suspends the authorisation or recognition of a collective investment scheme under subsection (5), it shall notify the responsible person for the scheme.

(7) Subject to subsection (8), the Authority may, upon an application in writing made to it by the responsible person for a collective investment scheme, in such form and manner as may be prescribed, withdraw the authorisation or recognition of that scheme.

(8) The Authority may refuse to withdraw the authorisation or recognition of a collective investment scheme under subsection (7) where the Authority is of the opinion that —

- (a) there is any matter concerning the scheme which should be investigated before the authorisation or recognition is withdrawn; or
- (b) the withdrawal of the authorisation or recognition would not be in the public interest.

(9) Where the Authority revokes an authorisation or recognition under subsection (1), suspends an authorisation or recognition under subsection (5) or withdraws an authorisation or recognition under subsection (7), it may —

- (a) impose such conditions on the revocation, suspension or withdrawal as it considers appropriate; and
- (b) publish notice of the revocation, suspension or withdrawal, and the reason therefor, in such manner as it considers appropriate.

Approval of trustees

289.—(1) The Authority may, upon an application made to it in such form and manner as may be prescribed, approve a public company to act as a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts (referred to in this Subdivision as an approved trustee).

(2) The Authority shall not approve a public company to act as trustee under subsection (1) unless the company satisfies such financial requirements and other criteria as the Authority may prescribe.

(3) An approved trustee shall continue to satisfy the financial requirements and other criteria prescribed under subsection (2).

(4) Where the Authority is of the opinion that an approved trustee —

- (a) has failed to satisfy a financial requirement or other criterion prescribed under subsection (2);
- (b) has not carried out its duties with due care and diligence;
- (c) has acted in a manner which prejudices the participants of any authorised collective investment scheme; or
- (d) has failed to comply with this Act or the Code on Collective Investment Schemes,

the Authority may —

- (i) revoke an approval granted under this section and may direct the manager for the collective investment scheme or schemes which such approved trustee was acting for, to appoint a new trustee for the scheme or schemes;
- (ii) prohibit such approved trustee from acting as trustee for any new collective investment scheme; or
- (iii) issue such direction as it deems fit.

(5) An approved trustee shall comply with any direction issued to it under subsection (4).

(6) For the avoidance of doubt, a direction issued under subsection (4) shall be deemed not to be subsidiary legislation.

(7) Any approved trustee who contravenes subsection (3) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a

further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Inspection of approved trustees

290.—(1) The Authority may, from time to time, inspect the books of an approved trustee.

(2) For the purpose of an inspection under this section, the approved trustee under inspection shall afford the Authority access to, and shall produce, its books and shall give such information and facilities as may be required to conduct the inspection.

(3) The Authority shall have the power to copy or take possession of the books of an approved trustee under inspection.

(4) An approved trustee which fails, without reasonable excuse, to produce any book or furnish any information or facilities in accordance with subsection (2), or otherwise obstructs the Authority in the exercise of its powers under this section, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Duty of trustees to furnish Authority with such return and information as Authority requires

291. An approved trustee shall furnish such returns and provide such information relating to its business as the Authority may require.

Liability of trustees

292.—(1) Subject to subsection (2), any provision in a trust deed required under section 286 (2) (c) or in any contract with the participants of a collective investment scheme to which such a trust deed relates, shall be void in so far as it would have the effect of exempting a trustee under the trust deed from, or indemnifying a trustee against, liability for breach of trust where the trustee fails to exercise the degree of care and diligence required of a trustee.

(2) Subsection (1) shall not invalidate —

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

- (b) any provision enabling such a release to be given —
 - (i) on the agreement thereto of a majority of not less than three-fourths of the participants in a collective investment scheme voting in person or by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee ceasing to act.

Authority may issue directions

293.—(1) The Authority may, where it appears to the Authority to be necessary or expedient in the public interest to do so, issue directions by notice in writing either of a general or specific nature to —

- (a) where a collective investment scheme is constituted as a corporation, the corporation;
- (b) the manager, trustee, or representative for a collective investment scheme; or
- (c) any class of such persons referred to in paragraph (a) or (b).

(2) Any person to whom a notice is given under subsection (1) shall comply with such direction as may be contained in the notice.

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

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

Service

294.—(1) Where a collective investment scheme —

- (a) is authorised under section 286, any document relating to the scheme shall be sufficiently served if served on the responsible person for the scheme at his last known address; or
- (b) is recognised under section 287, any document relating to the scheme shall be sufficiently served if served on the

responsible person for the scheme or the representative for the scheme at his last known address.

(2) Any notice or direction to be given or served by the Authority on a corporation (where a collective investment scheme is constituted as a corporation), the manager for a collective investment scheme, the trustee for a collective investment scheme or the representative for a collective investment scheme shall for all purposes be regarded as duly given or served if it has been delivered or sent by post or facsimile transmission to such person at his last known address.

(3) In the case of a corporation, the last known address referred to in subsections (1) and (2) shall be —

- (a) if it is a company incorporated in Singapore, the address of its registered office in Singapore; or
- (b) if it is a foreign company, the address of its registered office in Singapore or the registered address of its agent or, if it does not maintain a place of business in Singapore, its registered office in the place of its incorporation.

Winding up

295.—(1) Where a collective investment scheme is to be wound up, whether under this section or otherwise, the responsible person for the scheme shall give notice in writing of the proposed winding up to the Authority at least 7 days before the winding up.

(2) Where the Authority revokes or withdraws the authorisation of a collective investment scheme under section 288, the responsible person and, where applicable, the trustee shall take the necessary steps to wind up the scheme.

(3) Where —

- (a) the responsible person for a collective investment scheme authorised under section 286 is in liquidation; or
- (b) in the opinion of the trustee for a collective investment scheme authorised under section 286 which is constituted as a unit trust, the responsible person for the scheme has ceased to carry on business or has, to the prejudice of the participants of the scheme, failed to comply with any provision of the trust deed in respect of the scheme,

the trustee shall summon a meeting of the participants for the purpose of determining an appropriate course of action.

- (4) A meeting under subsection (3) shall be summoned —
- (a) by giving notice in writing of the proposed meeting at least 21 days before the proposed meeting to each participant at his last known address or, in the case of joint participants, to the participant whose name stands first in the records of the responsible person for the scheme; and
 - (b) by publishing, at least 21 days before the proposed meeting, an advertisement giving notice of the meeting in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.
- (5) If at any such meeting a resolution is passed by a majority in number representing three-fourths in value of the participants present and voting either in person or by proxy at the meeting that the scheme to which the trust deed relates be wound up, the responsible person for the scheme and, where applicable, the trustee shall take the necessary steps to wind up the scheme.
- (6) Any responsible person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.
- (7) Any responsible person or, where applicable, trustee who contravenes subsection (2) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.
- (8) Any trustee who contravenes subsection (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

Subdivision (3) — Prospectus Requirements

Requirement for prospectus and profile statement, where relevant

296.—(1) No person shall make an offer of units in a collective investment scheme to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, unless such offer or invitation —

- (a) is made in or accompanied by a prospectus in respect of the offer or invitation that —
 - (i) is prepared in accordance with such requirements as may be prescribed;

- (ii) is lodged with the Authority together with a written application for the registration of the prospectus; and
- (iii) is registered by the Authority; and

(b) complies with such requirements as may be prescribed.

(2) Notwithstanding subsection (1), an offer of units in a collective investment scheme to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, may be made in or accompanied by an extract from, or an abridged version of, a prospectus (referred to in this Subdivision as a profile statement), instead of a prospectus, if —

- (a) a prospectus is prepared in accordance with such requirements as may be prescribed under subsection (1) (a) (i) and the profile statement is prepared in accordance with such requirements as may be prescribed;
- (b) a copy each of the prospectus and profile statement is lodged with the Authority together with a written application for the registration of the prospectus and a written application for the registration of the profile statement, respectively; and the prospectus is lodged no later than the profile statement;
- (c) the prospectus and profile statement are registered by the Authority;
- (d) sufficient copies of the prospectus are made available for collection at the times and places specified in the profile statement; and
- (e) the offer or invitation complies with such other requirements as may be prescribed.

(3) No person shall make an offer of units in a collective investment scheme to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, if that scheme has not been formed or does not exist.

(4) Subsection (1) shall not apply to an offer of units in a collective investment scheme to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, that is exempted under Subdivision 4.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding

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

(6) The Authority may register a prospectus or a profile statement on any day between the 14th and 21st day (both days inclusive) from the date of lodgment thereof with the Authority, unless —

- (a) the Authority gives to the person who lodged the prospectus or profile statement a notice of an opportunity to be heard under subsection (12);
- (b) the Authority gives notice of an extension, in which case, the Authority may, not later than 28 days from the date of lodgment of the prospectus or profile statement —
 - (i) register the prospectus or profile statement; or
 - (ii) give to the person who lodged the prospectus or profile statement a notice of an opportunity to be heard under subsection (12); or
- (c) the person who lodged the prospectus or profile statement applies in writing for the prospectus or profile statement to be registered at a later date, in which case, the Authority may register the prospectus or profile statement at such later date as the Authority thinks fit.

(7) Subject to subsection (8) —

- (a) where any amendment to a prospectus is lodged prior to the registration of such prospectus, the prospectus and any profile statement which is lodged shall be deemed to have been lodged when such amendment was lodged;
- (b) where any amendment to a profile statement is lodged prior to the registration of such profile statement, the profile statement shall be deemed to have been lodged when such amendment was lodged.

(8) Where an amendment to a prospectus or profile statement is lodged prior to the registration of the prospectus or profile statement —

- (a) with the consent of the Authority; or
- (b) pursuant to an order by the Authority,

it shall be treated as part of the original prospectus or profile statement.

(9) The Authority may publish a prospectus or profile statement for public information after it has been lodged with the Authority and, for the purposes of this subsection, the person who lodges the prospectus or profile statement shall provide the Authority with a copy of the prospectus or profile statement in such form or medium for publication as the Authority may require.

(10) The Authority shall refuse to register a copy of any prospectus if —

- (a) the Authority is of the opinion that the prospectus contains a false or misleading statement or matter;
- (b) there is an omission from the prospectus of any information that is required to be included, or an inclusion in the prospectus of any information that is prohibited, by virtue of requirements prescribed under subsection (1) (a);
- (c) the Authority is of the opinion that the prospectus does not comply with the requirements of this Act;
- (d) a copy of the prospectus signed by the following persons is not lodged with the Authority:
 - (i) where the responsible person for the scheme is a corporation, by every director of the responsible person, and every person who is named in the prospectus as a proposed director of the responsible person, or by a person authorised by him in writing; or
 - (ii) where the responsible person for the scheme is not a corporation, by such persons as the Authority may approve;
- (e) copies verified as prescribed of any consent required by section 249 (as applied to this Subdivision by virtue of section 302) to the issue of the prospectus has not been lodged with the Authority; or
- (f) the Authority is of the opinion that it is not in the public interest to do so.

(11) The Authority shall refuse to register a copy of any profile statement if —

- (a) the Authority is of the opinion that the profile statement contains a false or misleading statement or matter;

- (b) there is an omission from the profile statement of any information that is required to be included, or an inclusion in the profile statement of any information that is prohibited, by virtue of requirements prescribed under subsection (2) (a);
- (c) a copy of the profile statement signed by the following persons is not lodged with the Authority:
 - (i) where the responsible person for the scheme is a corporation, by every director of the responsible person, and every person who is named in the profile statement as a proposed director of the responsible person, or by a person authorised by him in writing; or
 - (ii) where the responsible person for the scheme is not a corporation, by such persons as the Authority may approve;
- (d) the Authority is of the opinion that the profile statement does not comply with the requirements of this Act;
- (e) the prospectus has not been registered by the Authority; or
- (f) the Authority is of the opinion that it is not in the public interest to do so.

(12) The Authority shall not refuse to register a copy of a prospectus under subsection (10), or a profile statement under subsection (11), without giving the person who lodged the prospectus or profile statement, as the case may be, an opportunity to be heard except that an opportunity to be heard need not be given if the refusal is on the ground that it is not in the public interest to register the prospectus or profile statement on the basis of any of the following circumstances:

- (a) the responsible person is in the course of being wound up or otherwise dissolved whether in Singapore or outside Singapore;
- (b) execution against the responsible person in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or outside Singapore, in relation to or in respect of any property of the responsible person;

- (d) the responsible person has entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation.

(13) Any person who is aggrieved by the refusal of the Authority to register a copy of a prospectus or profile statement under subsection (10) or (11) may, within 30 days after he is notified of the decision, appeal to the Minister whose decision shall be final.

(14) If —

- (a) a prospectus or profile statement is issued, circulated or distributed without a copy thereof having been registered by the Authority; or
- (b) an application to subscribe for or purchase units in a collective investment scheme is accepted, or units in a collective investment scheme are issued or sold, without a copy of a prospectus and profile statement, where applicable, in respect of the units having been registered by the Authority,

the responsible person for the scheme and every person who is knowingly a party to the issue, circulation or distribution of the prospectus or profile statement, the acceptance of the application to subscribe for or purchase units, or the issue or sale of the units, as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment of a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(15) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide for penalties not exceeding a fine of \$50,000.

Stop order for prospectus and profile statement

297.—(1) If a prospectus that has been registered —

- (a) contains any statement or matter which, in the opinion of the Authority, is false or misleading;
- (b) omits any information that should have been included in it, or includes any information that is prohibited, by requirements prescribed under section 296; or

- (c) does not, in the opinion of the Authority, comply with the requirements of this Act,

the Authority may by an order in writing (referred to in this section as a stop order) served on the responsible person for the scheme, direct that no or no further units in a collective investment scheme to which the prospectus relates be issued or sold.

- (2) If a profile statement that has been registered —
 - (a) contains any statement or matter which, in the opinion of the Authority, is false or misleading;
 - (b) omits any information that should have been included in it, or includes any information that is prohibited, by requirements prescribed under section 296; or
 - (c) does not, in the opinion of the Authority, comply with the requirements of this Act,

the Authority may, by an order in writing (referred to in this section as a stop order) served on the responsible person for the scheme, direct that no or no further units in a collective investment scheme to which the profile statement relates be issued or sold.

(3) The Authority shall not serve a stop order under subsection (1) or (2) without giving the responsible person who lodged the prospectus or profile statement an opportunity to be heard.

(4) Where applications for units in a collective investment scheme have been made prior to the service of a stop order, and —

- (a) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —
 - (i) where units in the scheme have not been issued to the applicants, the responsible person for the scheme shall treat such applications as having been withdrawn; or
 - (ii) where units in the scheme have been issued to the applicants, the issue of the units shall be deemed to be void,

and the responsible person shall, within 7 days from the date of the stop order, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units; or

(b) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may by notice in writing issue such directions to the responsible person for the scheme as it deems fit, including a direction that the responsible person provide the applicants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(5) In determining whether to issue a direction under subsection (4) to the responsible person to refund the contributions of the applicants, the Authority shall consider whether the responsible person for the scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include:

- (a) whether a significant amount of the contributions of the participants has been invested;
- (b) the liquidity of the property of the collective investment scheme; and
- (c) the penalties, if any, payable for liquidating the property.

(6) For the avoidance of doubt, a direction issued under subsection (4) shall be deemed not to be subsidiary legislation.

(7) If the Authority is of the opinion that any delay in serving a stop order pending the hearing required under subsection (3) is not in the interests of the public, the Authority may, without giving the responsible person who lodged the prospectus or profile statement an opportunity to be heard, serve an interim stop order on such person directing that no or no further units in a collective investment scheme to which the prospectus or profile statement relates be issued or sold.

(8) An interim stop order shall, unless revoked, be in force —

- (a) in a case where —
 - (i) it is served during a hearing under subsection (3); or
 - (ii) a hearing under subsection (3) is commenced while it is in force,until the Authority makes an order under subsection (1) or (2); or
- (b) in any other case, for a period of 14 days from the day on which the interim stop order is served.

(9) Subsection (4) shall not apply where only an interim stop order has been served.

(10) Any person who fails to comply with a stop order served under subsection (1) or (2) or an interim stop order served under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(11) Any responsible person for a collective investment scheme who contravenes subsection (4), or any direction issued to him under that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Lodging supplementary document or replacement document

298.—(1) If, after a prospectus or profile statement is registered but before the close of the offer or invitation, or the expiration of 12 months from the date of registration of the prospectus by the Authority, whichever is earlier, the responsible person for a collective investment scheme becomes aware of —

- (a) a false or misleading statement or matter in the prospectus or profile statement;
- (b) an omission from the prospectus or profile statement of any information that should have been included in it by requirements prescribed under section 296; or
- (c) a new circumstance that —
 - (i) has arisen since the prospectus or profile statement was lodged with the Authority; and
 - (ii) would have been required under this Act to be included in the prospectus or profile statement,if it had arisen before the prospectus or the profile statement, as the case may be, was lodged,

and that is materially adverse from the point of view of an investor, the responsible person for the scheme may lodge a supplementary

or replacement prospectus, or a supplementary or replacement profile statement (referred to in this section as a supplementary or replacement document, as the case may be), with the Authority.

(2) If, after a prospectus or profile statement is registered but before the close of an offer or invitation, or the expiration of 12 months from the registration of the prospectus by the Authority, whichever is earlier, the responsible person for a collective investment scheme wishes to update any information in a prospectus or profile statement and he declares in writing to the Authority that none of the situations set out in subsection (1) apply at that time, the responsible person may lodge a supplementary or replacement document with the Authority.

(3) At the beginning of a supplementary document, there shall be —

- (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;
- (b) an identification of the prospectus or profile statement it supplements;
- (c) an identification of any previous supplementary document lodged with the Authority in relation to the offer or invitation; and
- (d) a statement that it is to be read together with the prospectus or profile statement it supplements and any previous supplementary document.

(4) At the beginning of a replacement document, there shall be —

- (a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and
- (b) an identification of the prospectus or profile statement it replaces.

(5) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Authority.

(6) The responsible person for a collective investment scheme which lodges a supplementary document under subsection (1) shall take reasonable steps to inform potential investors of such lodgment and make available the supplementary document to them.

(7) For the purposes of the application of this Division to events that occur after the lodgment of a supplementary document —

- (a) where the supplementary document is a supplementary prospectus, the prospectus shall be taken to be the original prospectus together with the supplementary prospectus and any previous supplementary prospectus; and
- (b) where the supplementary document is a supplementary profile statement, the profile statement shall be taken to be the original profile statement together with the supplementary profile statement and any previous supplementary profile statement.

(8) The responsible person for a collective investment scheme which lodges a replacement document under subsection (1) shall take reasonable steps to inform potential investors of such lodgment and make available the replacement document to them.

(9) For the purposes of the application of this Division to events that occur after the lodgment of the replacement document —

- (a) where the replacement document is a replacement prospectus, the prospectus shall be taken to be the replacement prospectus; and
- (b) where the replacement document is a replacement profile statement, the profile statement shall be taken to be the replacement profile statement.

(10) Where applications have been made under the original prospectus or profile statement for units in a collective investment scheme prior to the lodgment of a supplementary document or replacement document under subsection (1), the responsible person for the scheme shall give the applicants and all participants of the scheme the supplementary document or replacement document, as the case may be, within 7 days from the date of lodgment of the supplementary document or replacement document.

(11) Any person who contravenes subsection (3), (4), (5), (6) 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.

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

Duration of validity of prospectus

299.—(1) No person shall make an offer of units in a collective investment scheme to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, on the basis of a prospectus or profile statement after the expiration of 12 months from the date of registration of the prospectus by the Authority.

(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.

(3) Where an issue or sale of units in a collective investment scheme is made on the basis of a prospectus or profile statement after the expiration of 12 months from the date of registration of the prospectus by the Authority, such issue or sale shall not, by reason only of that fact, be voidable or void.

Restrictions on advertisements, etc.

300.—(1) If a prospectus is required for an offer or invitation, or intended offer or invitation, of units in a collective investment scheme or proposed collective investment scheme to the public for subscription or purchase, a person shall not —

- (a) advertise the offer or invitation or intended offer or invitation; or
- (b) publish a statement that —
 - (i) directly or indirectly refers to the offer or invitation or intended offer or invitation; or
 - (ii) is reasonably likely to induce people to subscribe for or purchase the units,

unless the advertisement or publication is authorised by this section and complies with such requirements as may be prescribed.

(2) In determining whether a statement —

- (a) indirectly refers to an offer or invitation, or intended offer or invitation; or
- (b) is reasonably likely to induce people to subscribe for or purchase the units in a collective investment scheme,

regard shall be had to whether the statement is likely to encourage investment decisions to be made on the basis of the statement rather than on the basis of information contained in a prospectus or profile statement.

(3) For the avoidance of doubt, a person may disseminate a prospectus or profile statement that has been registered by the Authority without contravening subsection (1).

(4) An advertisement or publication does not contravene subsection (1) if it —

- (a) consists solely of a notice or report of a meeting of the participants of the collective investment scheme;
- (b) consists solely of a report about the collective investment scheme or proposed collective investment scheme that is prepared in accordance with the Code on Collective Investment Schemes;
- (c) is a news report, or a genuine comment, in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating to —
 - (i) a prospectus or a profile statement that has been lodged with the Authority or information contained in such a prospectus or a profile statement; or
 - (ii) a notice or report referred to in paragraph (a) or (b); or

- (d) is a report about the units in the collective investment scheme or proposed collective investment scheme published by someone who is not —
 - (i) the responsible person for the scheme, its agent or distributor;
 - (ii) a person who has an interest in the success of the issue or sale of the units; or
 - (iii) acting at the instigation of, or by arrangement with, any person referred to in sub-paragraph (i) or (ii).

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- (5) A person does not contravene subsection (1) if —
- (a) he publishes an advertisement or publication in the ordinary course of a business of —
 - (i) publishing a newspaper, periodical or magazine; or
 - (ii) broadcasting by radio, television, or any other means of broadcasting or communication; and
 - (b) he did not know, and had no reason to suspect, that its publication would constitute a contravention of subsection (1).

(6) Subsection (4) (c) and (d) shall not apply to an advertisement or statement if any person gives consideration or any other benefit for the publication of the advertisement or statement.

(7) Any person who contravenes subsection (1), and, in the case of a corporation, every officer or other person who knowingly authorised or permitted the publication or dissemination, 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.

(8) This section does not affect any liability that a person has under any other law.

(9) The Authority may exempt any person or class of persons from this section, subject to such conditions as may be determined by the Authority.

(10) Any person who contravenes any of the conditions under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Issue of units where prospectus indicates application to list on securities exchange

301.—(1) Where a prospectus states or implies that application has been or will be, made for permission for the units in a collective investment scheme offered thereby to be listed for quotation on the official list of any securities exchange, and —

- (a) the permission is not applied for in the form required by the securities exchange within 3 days from the date of the issue of the prospectus; or
- (b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the securities exchange,

then —

- (i) any issue whenever made of units made on an application in pursuance of the prospectus shall be void; and
- (ii) any person who continues to issue such units after the period specified in paragraph (a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(2) Where the permission has not been applied for, or has not been granted as mentioned under subsection (1), applications for units in the collective investment scheme have been made and —

- (a) the contributions of the applicants to the scheme have not yet been invested in accordance with the scheme —
 - (i) in a case where units in the scheme have not been issued to the applicants, the responsible person for the scheme shall treat such applications as having been withdrawn; or
 - (ii) in a case where units in the scheme have been issued to the applicants, the issue of the units shall be deemed to be void,

and the responsible person shall within 7 days after the period specified in subsection (1) (a) or (b), whichever is applicable, pay to the applicants all moneys which the applicants have paid for the units, including contributions to the scheme and charges the applicants have paid to the responsible person, its agent, or any person through whom the applicant has applied for the units; or

- (b) the contributions of the applicants to the scheme have been invested in accordance with the scheme, the Authority may

by notice in writing issue such directions to the responsible person for the scheme as it deems fit, including a direction that the responsible person provide the applicants with an option, on such terms as the Authority may approve, to obtain from the responsible person a refund of all moneys contributed by the applicants or to redeem their units in accordance with the scheme.

(3) In determining whether to issue a direction under subsection (2) (b) to the responsible person to refund the contributions of the applicants, the Authority shall consider whether the responsible person for the scheme will be able to liquidate the property of the scheme without material adverse financial effect to the applicants, and for this purpose, the factors which the Authority may take into account include —

- (a) whether a significant amount of the contributions of the participants has been invested;
- (b) the liquidity of the property of the collective investment scheme; and
- (c) the penalties, if any, payable for liquidating the property.

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

(5) Any responsible person to whom a notice is given under subsection (2) shall comply with such direction as may be contained in the notice.

(6) For the avoidance of doubt, a direction issued under subsection (2) shall be deemed not to be subsidiary legislation.

(7) All moneys received under this section shall be kept in a separate bank account so long as the responsible person for the collective investment scheme may become liable to repay it under subsection (2).

(8) Any responsible person for a scheme which is not in compliance with subsection (7) and, where the scheme is a corporation, every officer thereof, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a

term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(9) Where the securities exchange has, within the period specified in subsection (1) (b), granted permission subject to compliance with such requirements as may be specified by the securities exchange, permission shall be deemed to have been granted by the securities exchange if —

- (a) in a case where the responsible person for the scheme is a corporation, the directors of the corporation; or
- (b) in a case where the responsible person for the scheme is not a corporation, such persons as may be required by the securities exchange,

have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.

(10) Any person who fails to comply with any undertaking given to a securities exchange under subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(11) A person shall not issue a prospectus inviting persons to subscribe for or purchase units in a collective investment scheme if it includes —

- (a) a false or misleading statement that permission has been granted for those units to be dealt in or quoted on any securities exchange; or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting units on any securities exchange, or to any requirements of a securities exchange, unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the securities exchange within 3 days from the date of issue of the prospectus or the statement has been approved by the Authority for inclusion in the prospectus.

(12) Any person who contravenes subsection (11) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

\$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(13) Where a prospectus contains a statement to the effect that the constituent documents for the collective investment scheme comply, or have been drawn so as to comply, with the requirements of any securities exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of subsection (11) (b) to be a prospectus that includes a statement that application has been, or will be, made for permission for the units to which the prospectus relates, to be listed for quotation on the official list of the securities exchange.

Applicability of provisions relating to shares

302. Sections 247, 249, 252, 253, 254 and 255 shall, with such modifications and adaptations as are necessary, apply to an offer or invitation to the public to subscribe for or purchase units in a collective investment scheme and have effect accordingly as if the units were shares in respect of which an offer or invitation were made to the public for subscription or purchase and as if the persons accepting any offer or invitation to subscribe for or purchase any units were subscribers for or purchasers of shares, respectively.

Subdivision (4) — Exemptions

Offer or invitation made under certain circumstances

303. Subdivision (3) of this Division shall not apply to an offer of units in a collective investment scheme to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, if it is made in relation to units in a collective investment scheme that have been previously issued and that are quoted, or listed for quotation, on a securities exchange.

Offer or invitation made to certain institutions or persons

304. Subdivisions (2) and (3) of this Division shall not apply to an offer of units in a collective investment scheme to the public for subscription or purchase, or an invitation to the public to subscribe for or purchase units in a collective investment scheme, if —

- (a) the units in the scheme, if subscribed for or purchased in Singapore, are issued subject to the condition that they shall not be transferable except by operation of law; and
- (b) the offer or invitation is made to —
 - (i) a bank that is licensed under the Banking Act (Cap. 19) or a merchant bank that is approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
 - (ii) an insurance company that is registered under the Insurance Act (Cap. 142) or a trust company registered under the Trust Companies Act (Cap. 336);
 - (iii) a statutory board;
 - (iv) the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities;
 - (v) the holder of a capital markets services licence for fund management;
 - (vi) a pension fund or collective investment scheme;
 - (vii) an investment company as defined in section 355 (1) of the Companies Act (Cap. 50);
 - (viii) a financial adviser licensed under the Financial Advisers Act 2001 or exempted under that Act from obtaining such a licence; or
 - (ix) such other person who, pursuant to the offer or invitation, acquires the units as principal or as a trustee for accounts fully managed by it, and who has been declared by the Authority as an exempt purchaser or is within a class of persons declared by the Authority as exempt purchasers.

Offer or invitation made to sophisticated investors

305.—(1) Where an offer of units in a collective investment scheme for subscription or purchase, or an invitation to subscribe for or purchase units in a collective investment scheme, is made to a sophisticated investor —

- (a) in the case of a scheme (referred to in this section as a restricted authorised scheme) which is constituted in Singapore, Subdivisions (2) and (3) of this Division shall not

apply, except to such extent and with such modifications as may be prescribed; and

- (b) in the case of a scheme (referred to in this section as a restricted recognised scheme) which is constituted outside Singapore, Subdivisions (2) and (3) of this Division shall not apply, except to such extent and with such modifications as may be prescribed,

if —

- (i) the offer or invitation is not accompanied by an advertisement making an offer or invitation or calling attention to the offer or invitation, or intended offer or invitation;
- (ii) no selling or promotional expenses are paid or incurred in connection with the offer or invitation other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by the holder of a capital markets services licence to deal in securities or an exempt person in respect of dealing in securities;
- (iii) the offer or invitation is made in or accompanied by an information memorandum which —

(A) contains the following statement:

“The offer or invitation which is the subject of this information memorandum is only allowed to be made to sophisticated investors and not the retail public. Moreover, this information memorandum is not a prospectus as defined in the Securities and Futures Act. Accordingly statutory liability under that Act in relation to the content of prospectuses would not apply. You should consider carefully whether the investment is suitable for you.”; and

(B) states the particulars in respect of the collective investment scheme referred to in subsection (2); and

- (iv) the units in the scheme, if subscribed for or purchased in Singapore, are issued subject to the condition that they shall not be transferable except by operation of law.

(2) The particulars referred to in subsection (1) (b) to be included in the information memorandum are —

- (a) the investment objectives, focus and approach of and risks of subscribing for or purchasing units in the scheme;

- (b) whether the offer or invitation in respect of units in the scheme is regulated by any financial supervisory authority and if so, the title and jurisdiction of the legislation under which the scheme is regulated and the name and contact details of the authority;
 - (c) in the case of a restricted authorised scheme, the name and place of incorporation of the manager for the scheme and the trustee for the scheme, where applicable;
 - (d) in the case of a restricted recognised scheme which —
 - (i) is constituted as a corporation —
 - (A) its place of incorporation and business address; and
 - (B) the name and place of incorporation or registration of the manager for the scheme and the trustee or custodian for the scheme, where applicable;
 - (ii) is not constituted as a corporation, the name and place of incorporation or registration of the manager for the scheme and the trustee or custodian for the scheme, where applicable;
 - (e) whether the manager for the scheme and the trustee for the scheme, where applicable, are regulated by any financial supervisory authority and if so, the name and contact details of the authority.
- (3) In this section —
- “advertisement” means —
- (a) a written or printed communication;
 - (b) a communication by radio, television or other communication medium; or
 - (c) a communication by means of a recorded telephone message,
- that is published in connection with an offer or invitation in respect of units in a collective investment scheme but does not include an information memorandum;
- “information memorandum” means a document lodged with the Authority —

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- (a) purporting to describe a collective investment scheme; and
 - (b) purporting to have been prepared for delivery to and review by sophisticated investors so as to assist them in making an investment decision in respect of units in the scheme which are the subject of an offer or invitation;

“sophisticated investor” means —

- (a) a person who acquires units in a collective investment scheme, pursuant to the offer or invitation in question, as principal if the aggregate consideration for the acquisition is not less than \$200,000 (or its equivalent in a foreign currency) for each transaction whether such amount is paid for in cash, by exchange of shares or other assets; or
- (b) a person who acquires units, pursuant to the offer or invitation in question, as principal and —
 - (i) whose total net personal assets exceed \$2 million (or its equivalent in a foreign currency) or whose income in the preceding 12 months is not less than \$300,000 (or its equivalent in a foreign currency) at the time of the acquisition; or
 - (ii) in the case of a corporation, whose total net assets exceed \$10 million in value (or its equivalent in a foreign currency) as determined by the last audited balance-sheet of the corporation; or
- (c) an officer of the person making the offer or invitation or a spouse, parent, brother, sister, son or daughter of that officer or of the person making the offer or invitation, if he is a natural person.

(4) Notwithstanding any requirement in section 99 or any regulation made thereunder that a person has to deal in securities for his own account with or through a person prescribed by the Authority so that he can qualify as an exempt person, a person who acquires units in a collective investment scheme under section 304 or this section for his own account without complying with such requirement

shall be deemed to be an exempt person even though he does not comply with that requirement.

(5) The Authority may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in paragraph (a) or (b) in the definition of “sophisticated investor” in subsection (2).

Power of Authority to exempt

306.—(1) The Authority may exempt any person or class of persons, subject to such conditions as the Authority may determine, from complying with all or any of the provisions of this Division or any regulations made thereunder in relation to an offer or invitation in respect of any unit or class of units.

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

(3) This Division shall not apply in the case of the sale of any unit in a collective investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy in the ordinary course of the realisation of assets for the purposes of the sale.

Revocation of exemption

307.—(1) Where the Authority considers that it is necessary in the public interest or for the protection of investors, it may revoke any exemption under this Subdivision (including an exemption granted under section 306 (1)), subject to such conditions as it thinks fit.

(2) The Authority may revoke an exemption under subsection (1) without giving the person affected by the revocation an opportunity to be heard, but the person may, within 14 days of the revocation, apply to the Authority for the revocation to be reviewed by the Authority, and the revocation shall remain in effect unless it is withdrawn by the Authority.

(3) A revocation under this section shall be final and conclusive and there shall be no appeal therefrom.

Transactions under exempted offers or invitations subject to Division 2 of Part XII of Companies Act and Part XII of this Act

308. For the avoidance of doubt, it is hereby declared that in relation to any transaction carried out under an exempted offer or invitation under this Part, nothing in this Part shall limit or diminish any liability which any person may incur in respect of any relevant offence under Division 2 of Part XII of the Companies Act or Part XII of this Act or any penalty, award of compensation or punishment in respect of any such offence.

*Division 3 — Securities Hawking***Securities hawking prohibited**

309.—(1) No person shall make an offer to any person of securities for subscription or purchase, or an invitation to any person to subscribe for or purchase securities, in the course of, or arising from, an unsolicited meeting with that other person.

(2) Subsection (1) shall not apply to any person who makes an offer or invitation in respect of securities that does not need a prospectus by virtue of section 274, 275, 304 or 305.

(3) The Authority may, by order published in the *Gazette*, exempt —

- (a) any person or class of persons; or
- (b) any class or description of securities,

from compliance with subsection (1), subject to such conditions as may be specified in the order.

(4) Every person who acts, incites, causes or procures any person to act in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent offence, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) Where any person is convicted of having made an offer or invitation in contravention of subsection (1), the court before which he is convicted may order that any contract made as a result of the offer or invitation shall be void and may give such consequential

directions as it thinks proper for the repayment of any money or the retransfer of any securities.

(6) An appeal against any order made under subsection (5) and any consequential directions shall lie to the High Court.

(7) In this section —

- (a) “securities” means the securities of a corporation, whether the corporation is in existence or to be formed; and
- (b) a reference to an offer or invitation in respect of securities for subscription or purchase shall be construed as including an offer or invitation in respect of securities by way of barter or exchange.

PART XIV

APPEALS

Appeals to Minister

310.—(1) Where an appeal is made to the Minister under this Act, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he thinks fit, and the Minister’s decision shall be final.

(2) Except for an appeal under Part II or III, where an appeal is made to the Minister under this Act, the Minister shall, within 28 days of his receipt of the appeal, constitute an Appeal Advisory Committee comprising not less than 2 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

(3) The Appeal Advisory Committee shall submit to the Minister a written report on the appeal referred to it under subsection (2), and may make such recommendations as it thinks fit.

(4) The Minister shall consider the report submitted under subsection (3) in making his decision under this section but he shall not be bound by the recommendations in the report.

Appeal Advisory Committees

311.—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 310, the Minister shall appoint a panel

(referred to in this Part as the Appeal Advisory Panel) comprising such members from the financial services industry and the public and private sectors as the Minister may appoint.

(2) A member of the Appeal Advisory Panel shall be appointed for a term of not more than 2 years and shall be eligible for reappointment.

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing relating to the securities or futures industry and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

(4) Nothing in subsection (3) shall compel the production by an advocate and solicitor of a document or material containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document or material which is in his possession.

(5) An advocate and solicitor who refuses to produce any document or other material referred to in subsection (4) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) For the purposes of this Act, every member of an Appeal Advisory Committee —

(a) shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224); and

(b) in case of any suit or legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Act, shall have the like protection and privileges as are by law given to a Judge in the execution of his office.

(7) Every Appeal Advisory Committee shall have regard to the interest of the public, the protection of investors and the safeguarding of sources of information.

(8) Subject to the provisions of this Act, an Appeal Advisory Committee may regulate its own procedure and shall not be bound by the rules of evidence.

Disclosure of information

312. Nothing in this Act shall require the Minister or any public servant to disclose facts which he considers to be against the public interest to disclose.

Regulations for the purpose of this Part

313. The Minister may make regulations with regard to the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees.

PART XV

MISCELLANEOUS

Prohibition of use of certain titles

314.—(1) Except with the written approval of the Authority, no person, other than a securities exchange, shall —

- (a) take or use, or have attached to or exhibited at any place, the title or description “securities exchange”, “stock exchange” or “derivatives exchange” in any language; or
- (b) take or use, or have attached to or exhibited at any place, any title or description which resembles the titles or descriptions specified in paragraph (a) or so closely resembles such titles or descriptions as to be calculated to deceive.

(2) Except with the written approval of the Authority, no person, other than a futures exchange, shall —

- (a) take or use, or have attached to or exhibited at any place, the title or description “futures exchange” or “derivatives exchange” in any language; or
- (b) take or use, or have attached to or exhibited at any place, any title or description which resembles the titles or descriptions specified in paragraph (a) or so closely resembles such titles or descriptions as to be calculated to deceive.

(3) Except with the written approval of the Authority, no person, other than a clearing house, shall —

- (a) take or use, or have attached to or exhibited at any place, the title or description “clearing house” in any language; or

- (b) take or use, or have attached to or exhibited at any place, any title or description which resembles the titles or descriptions specified in paragraph (a) or so closely resembles such titles or descriptions as to be calculated to deceive.

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

Secrecy

315.—(1) Every officer or employee of a securities exchange, a futures exchange, a recognised trading system provider, a person granted an exemption under section 5 (3) or 6 (3) or a clearing house shall preserve, and aid in preserving, secrecy with regard to all matters coming to his knowledge in the exercise or performance of his duties.

(2) Subsection (1) shall not apply —

- (a) to the disclosure of any information which is authorised by the Authority to be disclosed or furnished;
- (b) to the disclosure of information for the purpose of any legal proceedings brought under this Act or any other written law, or for the purpose of any report of any such proceedings, except that in relation to the position of a holder of a capital markets services licence to carry on business to deal in securities or trade in futures contracts or a customer of such holder, such proceedings may, if the court, on its own motion or on the application of a party to the proceedings, so orders, be held in camera and the information shall be secret as between the court and the parties to the proceedings; or
- (c) to the disclosure of information for such other purposes, or in such other circumstances, as the Authority may prescribe.

(3) Any person who contravenes subsection (1), directly or indirectly, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

Opportunity to be heard

316. Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person shall be given an opportunity to be heard.

Records

317.—(1) Subject to section 94, the Authority shall keep such records as it considers necessary, in such form as it thinks fit.

(2) Any person may, on payment of the prescribed fee —

- (a) inspect any register kept by the Authority under section 94 or any prospectus or profile statement lodged with the Authority under Part XIII and such other records lodged with or kept by the Authority as may be prescribed; or
- (b) require a copy of or extract from any such record to be given or certified by the Authority.

(3) A copy of or extract from any record lodged with or kept by the Authority certified to be a true copy or extract by the Authority shall in any proceedings be admissible as evidence of equal validity as the original record.

(4) In any legal proceedings a certificate by the Authority that a requirement of this Act specified in the certificate —

- (a) had or had not been complied with at a date or within a period specified in the certificate; or
- (b) had been complied with upon a date specified in the certificate but not before that date,

shall be received as prima facie evidence of the matters specified in the certificate.

(5) If the Authority is of the opinion that any record submitted to it —

- (a) contains any matter contrary to law;
- (b) by reason of any omission or misdescription has not been duly completed;
- (c) does not comply with the requirements of this Act; or

(d) contains any error, alteration or erasure,

the Authority may refuse to register or receive the record and request that the record be appropriately amended or completed and resubmitted or that a fresh record be submitted in its place.

(6) Any party that is aggrieved by the refusal of the Authority to register or receive any record under subsection (5) may, within 30 days after it is notified of the Authority's decision, appeal to the Minister whose decision shall be final.

(7) The Authority may, if it is of the opinion that it is no longer necessary or desirable to retain any record which has been microfilmed or converted to electronic form, destroy such record or otherwise arrange for such record to be disposed of in such manner as the Authority thinks fit.

Size, durability and legibility of records delivered to Authority

318.—(1) For the purposes of securing that the records furnished to or lodged with the Authority under this Act are of a standard size, durable and easily legible, the Authority may prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colour of lettering, or otherwise) as it considers appropriate; and different requirements may be so prescribed for different documents or classes of documents.

(2) Where the Authority is of the opinion that any record (whether an original or copy thereof) delivered to the Authority does not comply with such requirements prescribed under this section, the Authority may serve on any person by whom under that provision the record was required to be delivered (or if there are 2 or more such persons, may serve on any of them) a notice —

(a) stating its opinion to that effect; and

(b) indicating the requirements so prescribed with which the record has failed to comply.

(3) Where the Authority serves a notice under subsection (2) with respect to a record delivered under this Act, then, for the purposes of any provision of this Act which enables a penalty to be imposed in respect of any omission to deliver to the Authority such record (and, in particular, for the purposes of any such provision whereby a penalty may be imposed by reference to each day during which the omission continues) —

- (a) any duty imposed by that provision to deliver the record to the Authority shall be treated as not having been discharged; but
- (b) no account shall be taken of any days falling within the period referred to in subsection (4).

(4) The period referred to in subsection (3) (b) is the period beginning on the day on which the record was delivered to the Authority as mentioned in subsection (2) and ending on the 14th day after the date of service of the notice under subsection (2).

(5) In this section, any reference to delivering a record shall be construed as including a reference to sending, forwarding, producing, furnishing, lodging or (in the case of a notice) giving the record.

Supply of magnetic tapes — exclusion of liability for errors or omissions

319. Where the Authority furnishes information, whether in bulk or otherwise, to any person by way of magnetic tapes or by any electronic means, neither the Authority nor any of its officers or authorised agents involved in the furnishing of such information shall be liable for any loss or damage suffered by that person by reason of any error or omission of whatever nature appearing therein or however caused if made in good faith and in the ordinary course of the discharge of the duties of such officers or authorised agents.

Appointment of assistants

320.—(1) The Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power to make subsidiary legislation.

(2) Any person appointed by the Authority under subsection (1) shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224).

Codes, guidelines, policy statements, practice notes and no-action letters by Authority

321.—(1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines, policy statements, practice notes and no-action letters as it considers appropriate for providing guidance —

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- (a) for the furtherance of its regulatory objectives;
 - (b) in relation to any matter relating to any of the functions of the Authority under any of the relevant provisions; or
 - (c) in relation to the operation of any of the provisions of this Act.

(2) The Authority may publish any such code, guideline, policy statement, practice note or no-action letter, and in such manner as it thinks fit.

(3) The Authority may revoke, vary, revise or amend the whole or any part of any code, guideline, policy statement, practice note or no-action letter issued under this section in such manner as it thinks fit, and —

- (a) the other provisions of this section shall apply, with the necessary modifications, to such amendments to the code, guideline, policy statement, practice note or no-action letter as they apply to the code, guideline, policy statement, practice note or no-action letter; and
- (b) any reference in this Act or any other written law to the code, guideline, policy statement, practice note or no-action letter (however expressed) shall, unless the context otherwise requires, be a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(4) A failure on the part of any person to observe any of the provisions of a code, guideline, policy statement or practice note issued under this section that applies to him shall not of itself render that party liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(5) The issuance by the Authority of a no-action letter shall not of itself prevent the institution of any criminal proceedings against any person for a contravention of any provision of this Act.

(6) Any code, guideline, policy statement or practice note issued under this section —

- (a) may be of general or specific application; and
- (b) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(7) For the avoidance of doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section shall be deemed not to be subsidiary legislation.

(8) In this section, a “no-action” letter means a letter written by the Authority to an applicant for such a letter to the effect that, if the facts are as represented by the applicant, the Authority does not intend to institute proceedings against the applicant over a particular state of affairs or particular conduct.

Power of Authority to publish information

322.—(1) The Authority may, where it thinks it necessary or expedient in the interest of the public or section of the public or for the protection of investors and in such form or manner as it thinks fit, publish —

- (a) any information relating to an exchange holding company, a securities exchange, a futures exchange, a recognised trading system provider, a person granted an exemption under section 5 (3) or 6 (3), a person operating an exempt market, a clearing house, a person operating an exempt clearing facility, a holder of a capital markets services licence, an exempt person, a representative, or an approved trustee for a collective investment scheme as defined in section 289; or
- (b) any other information which the Authority has acquired in the exercise of its functions or the performance of its duties under this Act.

(2) Without prejudice to the generality of subsection (1), the Authority may publish information relating to —

- (a) the lapsing, revocation or suspension of the approval, licence or exemption granted to any person referred to in subsection (1);
- (b) the making of a prohibition order against any person referred to in subsection (1);
- (c) the reprimand of any person referred to in section 334;
- (d) the removal of an officer of any person referred to in subsection (1);
- (e) the composition of any offence —
 - (i) under this Act committed by any person; or

- (ii) under any other law (whether of Singapore or any territory or country outside Singapore) involving a person referred to in subsection (1);
- (f) any civil or criminal proceedings brought —
 - (i) under this Act against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or
 - (ii) under any other law, whether of Singapore or any territory or country outside Singapore, against any person referred to in subsection (1) and the outcome of such proceedings, including any settlement, whether in or out of court;
- (g) any disciplinary proceedings brought against any person referred to in subsection (1), by the Authority, a securities exchange, a futures exchange or a clearing house and the outcome of such proceedings; and
- (h) any other action as may have been taken by the Minister, the Authority, a securities exchange, a futures exchange or a clearing house against any person referred to in subsection (1).

Immunity of Authority and its employees, etc.

323. No suit or other legal proceedings shall lie against the Authority or any officer or employee of the Authority or any person acting under the direction of the Authority —

- (a) for any act done in good faith —
 - (i) in the performance, or intended performance, of any function or duty; or
 - (ii) in the exercise, or intended exercise, of any power under this Act; or
- (b) for any neglect or default in the performance or exercise in good faith of such function, duty or power.

Power of court to prohibit payment or transfer of moneys, securities, etc.

324.—(1) Where —

- (a) an investigation is being carried out under this Act in relation to any act or omission by a person, being an act or

omission that constitutes or may constitute an offence under this Act;

- (b) a criminal proceeding has been instituted against a person for an offence under this Act; or
- (c) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (a) or (b) or this paragraph, as the case may be (referred to in this section as the relevant person), is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of penalties, damages or compensation or otherwise, or to account for any securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property,

the court may, on application by the Authority, make any one or more of the following orders:

- (i) an order prohibiting either absolutely or subject to conditions a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to that relevant person, or to another person at the direction or request of, the relevant person;
- (ii) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person from paying, transferring or otherwise parting with possession of all or any of the moneys, securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property, to such relevant person, or to another person at the direction or request of, the relevant person;
- (iii) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;
- (iv) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of securities or documents of

title to securities, futures contracts, contracts in connection with leveraged foreign exchange trading, or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of securities from a register in Singapore to a register outside Singapore);

- (v) an order appointing —
 - (A) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of that person; or
 - (B) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of that person;
- (vi) where the relevant person is a natural person, an order requiring that person to deliver up to the court his passport and such other documents as the court thinks fit;
- (vii) where the relevant person is a natural person, an order prohibiting that person from leaving Singapore without the consent of the court.

(2) Where an application is made to the court for an order under subsection (1), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, make any interim order as it thinks fit pending the determination of the application.

(3) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court shall not require the Authority or any other person, as a condition of granting the order or interim order, to give any undertaking as to damages.

(4) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order.

(5) An order or interim order made under this section may be expressed to operate for a period specified in the order or interim order or until the order or interim order is rescinded.

(6) Any person who contravenes an order or interim order made by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) Subsection (6) shall not affect the powers of the court in relation to the punishment for contempt of court.

Power of court to make certain orders

325.—(1) Where —

- (a) on the application of the Authority, it appears to the court that a person has committed an offence under this Act, or has contravened any condition or restriction of a licence or the business rules of a securities exchange, futures exchange or clearing house, or the listing rules of a securities exchange or is about to do an act with respect to dealing in securities or trading in futures contracts that, if done, would be such an offence or contravention;
- (b) on the application of a securities exchange, it appears to the court that a person has contravened the business rules or listing rules of the securities exchange;
- (c) on the application of a futures exchange, it appears to the court that a person has contravened the business rules of the futures exchange; or
- (d) on the application of a clearing house, it appears to the court that a person has contravened the business rules of the clearing house,

the court may, without prejudice to any orders it would be entitled to make otherwise than under this section, make one or more of the following orders:

- (i) in the case of a persistent or continuing breach of this Act, or of any condition or restriction of a licence, or of any business rule of a securities exchange, futures exchange or clearing house, or any listing rule of a securities exchange an order restraining a person from carrying on business to deal in securities or trade in futures contracts, or acting as a representative of such a person, or from holding himself out as so carrying on business or so acting;

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- (ii) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities or trading in any futures contracts that are specified in the order;
 - (iii) an order appointing a receiver of the property of the holder of a capital markets services licence to deal in securities or trade in futures contracts or of property that is held by such a holder for or on behalf of another person whether on trust or otherwise;
 - (iv) an order declaring a contract relating to any dealing in securities or trading in futures contracts to be void or voidable;
 - (v) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
 - (vi) any ancillary order deemed to be desirable in consequence of the making of any of these orders.

(2) The court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) A person appointed by order of the court under subsection (1) as a receiver of the property of the holder of a capital markets services licence to deal in securities or trade in futures contracts —

- (a) may require the holder to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;
- (b) may acquire and take possession of any property of which he has been appointed receiver;
- (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the holder might lawfully have dealt with the property; and
- (d) has such other powers in respect of the property as the court may specify in the order.

(4) For the purposes of subsections (1) and (3), “property”, in relation to the holder of a capital markets services licence to deal in securities or trade in futures contracts, includes moneys, securities,

futures contracts and documents of title to securities or other property entrusted to or received on behalf of any other person by the holder or another person in the course of or in connection with a business of dealing in securities or trading in futures contracts carried on by the holder.

- (5) Any person who, without reasonable excuse, contravenes —
- (a) an order made under subsection (1); or
 - (b) a requirement of a receiver appointed by order of the court under subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) Subsection (5) shall not affect the powers of the court in relation to the punishment for contempt of court.

(7) The court may, on the application of an affected person or of its own motion, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Injunctions

326.—(1) Where a person has engaged, is engaging or is likely to engage in any conduct that constitutes or would constitute a contravention of this Act, the court may, on the application of —

- (a) the Authority; or
- (b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if the court is of the opinion that it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that he is required by this Act to do, the court may, on the application of —

- (a) the Authority; or
- (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

make an order requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under subsection (1) or an order under subsection (2), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) or make an interim order requiring a person to do any act or thing, pending the determination of the application.

(4) Where the court has power under this section to grant an injunction or interim injunction or make an order or interim order restraining a person from engaging in conduct of a particular kind, or requiring a person to do a particular act or thing, the court may, either in addition to or in substitution for the injunction, order, interim injunction or interim order, order that person to pay damages to any other person.

(5) Where the court has granted an injunction or interim injunction or made an order or interim order under this section, the court may, on application by any party referred to in subsection (1) or (2) or by any person affected by the injunction, order, interim injunction or interim order, rescind or vary the injunction, order, interim injunction or interim order.

(6) An injunction, order, interim injunction or interim order granted or made under this section may be expressed to operate for a period specified in the injunction, order, interim injunction or interim order or until the injunction, order, interim injunction or interim order is rescinded.

(7) Any person who contravenes an injunction, order, interim injunction or interim order by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(8) Where an application is made to the court for the grant of an injunction under subsection (1), the power of the court to grant the injunction may be exercised —

- (a) if the court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(9) Where an application is made to the court for the making of an order under subsection (2), the power of the court to make the order may be exercised —

(a) if the court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the court that, in the event that an order is not made, it is likely the person will refuse or fail to do that act or thing, whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(10) Where any person referred to in subsection (1) or (2) makes an application to the court for the grant of an injunction or interim injunction or for the making of an order or interim order under this section, the court shall not require that person or any other person, as a condition of granting the injunction, order, interim injunction or interim order, to give any undertaking as to damages.

(11) Subsection (7) shall not affect the powers of the court in relation to the punishment for contempt of court.

Criminal jurisdiction of District Courts

327. A District Court shall, notwithstanding the Criminal Procedure Code (Cap. 68), have jurisdiction to try any offence under this Act and may impose the full penalty or punishment in respect of such offence.

Falsification of records by officers, employees and agents

328.—(1) Any officer, auditor, employee or agent of an exchange holding company, a securities exchange, a futures exchange, a recognised trading system provider, a clearing house, or a holder of

a capital markets services licence to carry on business in any regulated activity, who —

- (a) wilfully makes a false entry in any book or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that exchange holding company, securities exchange, futures exchange, recognised trading system provider, person granted an exemption under section 5 (3) or 6 (3), person operating an exempt market, clearing house, person operating an exempt clearing facility, holder of a capital markets services licence, exempt person, representative, or approved trustee for a collective investment scheme as defined in section 289, or causes any such entry to be made;
- (b) wilfully omits to make an entry in any book or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that exchange holding company, securities exchange, futures exchange, recognised trading system provider, person granted an exemption under section 5 (3) or 6 (3), person operating an exempt market, clearing house, person operating an exempt clearing facility, holder of a capital markets services licence, exempt person, representative, or approved trustee for a collective investment scheme as defined in section 289, or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, abstracts, conceals or destroys an entry in any book or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that exchange holding company, securities exchange, futures exchange, recognised trading system provider, person granted an exemption under section 5 (3) or 6 (3), person operating an exempt market, clearing house, person operating an exempt clearing facility, or holder of a capital markets services licence, exempt person, representative, or approved trustee for a collective investment scheme as defined in section 289, or wilfully causes any such entry to be altered, abstracted, concealed or destroyed,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) For the purposes of subsection (1), “officer” includes a person purporting to act in the capacity of an officer.

Duty not to furnish false information to Authority

329.—(1) Any person who furnishes the Authority with any information under this Act shall use due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information.

(3) Any person who signs any document lodged with the Authority shall use due care to ensure that the document is not false or misleading in any material particular.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

Duty not to furnish false statements to securities exchange, futures exchange, clearing house and Securities Industry Council

330.—(1) Any person who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to a securities exchange, futures exchange, clearing house or any officers thereof relating to —

- (a) dealing in securities, trading in futures contracts, foreign exchange trading or leveraged foreign exchange trading;
- (b) the enforcement of the business rules of a securities exchange, futures exchange or a clearing house or the listing rules of a securities exchange; or
- (c) the affairs of a corporation,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) Any person who, with intent to deceive, makes or furnishes or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to the Securities Industry Council or any of its officers, relating to any matter or

thing required by the Securities Industry Council in the exercise of its functions under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

Corporate offenders and unincorporated associations

331.—(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“partner” includes a person purporting to act as a partner;

“officer” —

(a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body or person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership) means the president, the secretary and members of the committee of the association and includes persons holding positions analogous to those of president, secretary or member of a committee.

(6) Regulations may provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

Offences by officers

332.—(1) Any person, being an officer of an exchange holding company, a securities exchange, a futures exchange, a recognised trading system provider, a clearing house, or a holder of a capital markets services licence to carry on business in any regulated activity, who fails to take all reasonable steps to secure —

- (a) compliance with any provision of this Act; or
- (b) the accuracy and correctness of any statement submitted under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In any proceedings against a person for a contravention of subsection (1), it is a defence if the defendant had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

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

Penalties for corporations

333.—(1) Subject to subsections (2) and (3), where a corporation is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 2 times the maximum amount that, but for this subsection, the court could impose as a fine for that offence.

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

(a) offences under sections 5 (16), 6 (16), 9 (9), 11 (2), 14 (3), 21 (3), 22 (6), 23 (6), 25 (3) and (4), 29 (7), 32 (3), 33 (6), 36 (10), 39 (2), 42 (3), 43 (3), 44 (6), 45 (3) and (4), 50 (6), 51 (9), 54 (2), 57 (3), 63 (3), 64 (6), 103, 105, 107 (3) and (4), 125 (7), 129, 263 (7), 289 (7), 290 (5) and 295 (6); or

(b) offences under any subsidiary legislation made under this Act where it is expressly provided in the subsidiary legislation that subsection (1) shall not apply to those offences.

(3) Where an individual is convicted of an offence under this Act by virtue of section 331, he shall be liable to the fine or imprisonment or both as prescribed for that offence and subsection (1) shall not apply.

Power of Authority to reprimand for misconduct

334.—(1) Where the Authority is satisfied that a relevant person is guilty of misconduct, the Authority may, if it thinks it necessary in the interest of the public, or a section of the public or for the protection of investors, reprimand the relevant person.

(2) In this section —

“misconduct” means the contravention of any provision of this Act, any condition or restriction imposed under this Act, any notice, direction, code, guideline, policy statement or practice note issued under section 321, any business or listing rules of a securities exchange, or any business rules of a futures exchange or clearing house, or, in the case of an officer, the failure to discharge any duty or function of his office;

“relevant person” means an exchange holding company, a securities exchange, a futures exchange, a recognised trading system provider, a person granted an exemption under section 5 (3) or 6 (3), a person operating an exempt market, a clearing house, a person operating an exempt clearing facility, a holder of a capital markets services licence, an exempt person, an approved trustee for a collective investment scheme as defined in section 289, or any employee, officer or representative thereof.

General penalty

335. Any person who contravenes any provision of this Act shall be guilty of an offence and, where no penalty is expressly provided, shall be liable on conviction to a fine not exceeding \$50,000.

Proceedings with consent of Attorney-General and power to compound offences

336.—(1) Proceedings for an offence against any provisions of Part XII may be taken only with the consent of the Attorney-General.

(2) The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the maximum fine prescribed for that offence.

Exemption

337.—(1) The Authority may, by regulations, exempt any person, capital markets product, matter or transaction, or any class thereof, from all or any of the provisions of this Act, subject to such conditions or restrictions as may be prescribed.

(2) An exemption granted to a person or in respect of any capital markets product, matter or transaction (other than an exemption granted to a class of persons, capital markets products, matters or transactions) under any provision of this Act other than subsection (1), or a revocation thereof, may be notified in writing to the person concerned, and need not be published in the *Gazette*.

Power to make regulations giving effect to treaty, etc., relating to securities or futures

338.—(1) Without prejudice to the generality of section 341, the Authority may make regulations prescribing the matters necessary or expedient to give effect in Singapore to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to the securities or futures industry, to which Singapore or the Authority is a party.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for —

-
- (a) exemptions from the requirements relating to licensing, approval or registration of any person, the recognition of recognised trading system providers or the lodgment or registration of any document under this Act;
 - (b) exemptions from any requirement in Part XIII;
 - (c) the application of this Act with such modifications as may be necessary;
 - (d) the revocation or withdrawal of any exemption granted; and
 - (e) the variation of any condition or restriction imposed in connection with the granting of any exemption under this Act.

Extra-territoriality of Act

339.—(1) Where a person does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute an offence against any provision of this Act, that person shall be guilty of that offence as if the act were carried out by that person wholly in Singapore, and may be dealt with as if the offence were committed wholly in Singapore.

(2) Where —

- (a) a person does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore; and
- (b) that act would, if carried out in Singapore, constitute an offence under any provision of Part II, III, IV, VIII, XII, XIII or XV,

that person shall be guilty of that offence as if the act were carried out by that person in Singapore, and may be dealt with as if the offence were committed in Singapore.

(3) The Authority may, by regulations, specify the circumstances under which subsection (2) does not apply.

Amendment of Schedules

340.—(1) The Minister may by order publish in the *Gazette*, amend, add to or vary the First, Second and Third Schedules.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions to the Act as may be necessary or expedient.

(3) Any order made under subsection (1) shall be presented to Parliament as soon as possible after publication in the *Gazette*.

(4) The Authority may, by regulations, provide that the definitions in the Second Schedule shall not apply to such person, capital markets product or class of persons or capital markets products as may be prescribed.

Regulations

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

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

- (a) the criteria for authorisation or recognition of collective investment schemes and the constitution, operation, management and offer of such schemes including but not limited to the powers and duties of the managers, trustees or representatives and the rights and obligations of the participants of the schemes;
- (b) the financial requirements and other criteria that a public company must fulfill for it to be considered for approval as a trustee;
- (c) applications for capital markets services licences to carry on business in any regulated activity or renewal of licences by persons holding a capital markets services licence to carry on business in any regulated activity and their representatives and matters incidental thereto;
- (d) the activities of, and standards to be maintained by persons holding a capital markets services licence to carry on business in any regulated activity and their representatives, including the manner, method and place of soliciting business by the holder of the licence and their representatives and the conduct of such solicitation;
- (e) prescribing the appropriate standards with respect to the qualifications, experience and training of applicants for any licence;
- (f) prescribing the conditions for the conduct of business on a securities exchange, futures exchange, recognised trading system provider, or clearing house;

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- (g) providing for the form, content distribution and publication of written, printed or visual material and advertisements that may be distributed or used by a person in respect of any regulated activity, including advertisements offering the services of persons holding a capital markets services licence or offering capital markets products for sale;
 - (h) prescribing the particulars to be recorded in the profit and loss accounts and balance-sheets and the information to be contained in auditor's reports required to be lodged under this Act on the annual accounts of persons holding a capital markets services licence to carry on business in any regulated activity;
 - (i) providing for the remuneration of an auditor appointed under this Act and for the costs of an audit carried out under this Act;
 - (j) the manner in which persons holding a capital markets services licence to carry on a business in any regulated activity conduct their dealings with their customers, conflicts of interest involving the holder of the licence and its customers, and the duties of the holder of a licence to its customers when making recommendations in respect of capital markets products;
 - (k) purchasing or selling of capital markets products for their own accounts, directly or indirectly by holders of capital markets services licences to carry on business in any regulated activity and their representatives;
 - (l) providing for the disclosure by a holder of a capital markets services licence of any material interest that such person might have in a proposed transaction relating to trading in capital markets products;
 - (m) the specification of manipulative and deceptive devices and contrivances in connection with the purchase or sale of securities, futures contracts or leveraged foreign exchange trading;
 - (n) the regulation or prohibition of trading on the floor of a securities exchange, futures exchange or recognised trading system provider by members of a securities exchange, futures exchange or recognised trading system provider, as the case may be, or their representatives directly or indirectly for their own accounts and the prevention of such

excessive trading on a securities exchange, futures exchange or recognised trading system provider but off the floor of a securities exchange, futures exchange or recognised trading system provider by members of a securities exchange, futures exchange or recognised trading system provider, as the case may be, or their representatives directly or indirectly for their own accounts as the Authority may consider is detrimental to the maintenance of a fair and orderly market; and the exemption of such transactions as the Authority may decide to be necessary in the interest of the public, or a section of the public or for the protection of investors;

- (o) the borrowing in the ordinary course of business by persons holding a capital markets services licence as the Authority may consider necessary or appropriate in the interest of the public, or a section of the public or for the protection of investors;
- (p) the prohibition or regulation of dealing in securities in circumstances where the person who deals in the securities does not hold or have an interest in the securities which are being or are proposed to be dealt with;
- (q) prohibiting or restricting forward contracts in securities of corporations that are admitted to the official list of a securities exchange;
- (r) prescribing any forms for the purposes of this Act;
- (s) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act, including licences required under this Act and the refund and remission of such fees;
- (t) the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to capital markets products as may be prescribed and for the collection and use of such information for any purpose, whether or not connected with the prescribed capital markets products; and
- (u) all matters and things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to this Act.

(3) Except as otherwise expressly provided in this Act, the regulations —

(a) may be of general or specific application; and

(b) may provide that a contravention thereof shall be punishable —

(i) in the case of an individual, with a fine not exceeding \$25,000 or imprisonment for a term not exceeding 12 months or both; or

(ii) in the case of a corporation, with a fine not exceeding \$50,000.

Repeal

342.—(1) The Futures Trading Act (Cap. 116) is repealed.

(2) Notwithstanding subsection (1), such provisions of the Futures Trading Act as may be specified by the Minister, by notification in the *Gazette*, may be repealed on such different dates (before the repeal of that Act) as the Minister may appoint.

(3) The Securities Industry Act (Cap. 289) is repealed.

(4) Notwithstanding subsection (3), such provisions of the Securities Industry Act as may be specified by the Minister, by notification in the *Gazette*, may be repealed on such different dates (before the repeal of that Act) as the Minister may appoint.

(5) Sections 57, 58, 97, 98, 99, and 101 to 106, Division 1, Division 5A, and Division 6 of Part IV, sections 213, 214 and 400, the Fifth Schedule, the Seventh Schedule and the Tenth Schedule of the Companies Act (Cap. 50) shall be repealed on such date as the Minister may by notification in the *Gazette* appoint, and the Minister may by notification in the *Gazette* appoint different dates for the repeal of the different provisions.

Consequential amendments to other written laws

343.—(1) The enactments specified in the first column of the Fourth Schedule are amended in the manner set out in the second column thereof.

(2) The Minister may by notification in the *Gazette* appoint different dates for the coming into operation of the different amendments in the Fourth Schedule.

(3) The Minister may, by order published in the *Gazette*, repeal or amend any written law which appears to him unnecessary having regard to the provisions of this Act or to be inconsistent with any provision of this Act.

Transitional provisions

344. The Authority may, by regulations, prescribe such transitional, savings and other consequential provisions as it may consider necessary or expedient.

FIRST SCHEDULE

Section 2

MARKETS

For the purposes of this Act —

“futures market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange futures contracts are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts (whether through that place or facility or otherwise), but does not include a place or facility used by only one person —

- (a) to regularly make offers or invitations to sell, purchase or exchange futures contracts, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly in the acceptance or making, respectively, of offers to sell, purchase or exchange futures contracts; or
- (b) to regularly accept offers to sell, purchase or exchange futures contracts;

“securities market” means a place at which, or a facility (whether electronic or otherwise) by means of which, offers or invitations to sell, purchase or exchange issued securities are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities (whether through that place or facility or otherwise) but does not include a place or facility used by only one person —

- (a) to regularly make offers or invitations to sell, purchase or exchange issued securities, being offers or invitations that are intended or may reasonably be expected, to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange issued securities; or
- (b) to regularly accept offers to sell, purchase or exchange issued securities.

SECOND SCHEDULE

Section 2

REGULATED ACTIVITIES

PART I

TYPES OF REGULATED ACTIVITIES

The following are regulated activities for the purposes of this Act:

- (a) dealing in securities;
- (b) trading in futures contracts;
- (c) leveraged foreign exchange trading;
- (d) advising on corporate finance;
- (e) fund management;
- (f) securities financing;
- (g) providing custodial services for securities.

PART II

INTERPRETATION

For the purposes of this Schedule —

“agreement” includes arrangement;

“advising on corporate finance” means giving advice —

- (a) to any entity concerning compliance with or in respect of laws or regulatory requirements (including the listing rules of a securities exchange) relating to the raising of funds by any entity;
- (b) to the person making an offer or invitation —
 - (i) to subscribe for or purchase securities; or
 - (ii) to sell or otherwise dispose of securities, concerning that offer or invitation; or
- (c) concerning the arrangement, reconstruction or take-over of a corporation or any of its assets or liabilities;

“dealing in securities” means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities;

“financial institution” means —

- (a) any bank licensed under the Banking Act (Cap. 19);

SECOND SCHEDULE — *continued*

- (b) any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); or
- (c) any finance company licensed under the Finance Companies Act (Cap. 108);

“foreign exchange trading” means the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or an arrangement the effect of which is that —

- (a) a party agrees to exchange currency at an agreed rate of exchange with another party whether the currency exchange is effected at the same time or at a specified future time and whether by way of delivery of an amount of currency for another currency, by way of crediting the account of the other party with an amount of another currency, by way of settlement or set-off between 2 or more persons or otherwise; or
- (b) a party agrees to settle in any manner with another party the difference between the value of any currency index agreed at the time of the making of the contract or arrangement and at a specified future time,

but does not include any act performed for or in connection with a contract or an arrangement which is a futures contract or such a proposed contract or proposed arrangement;

“fund management” means undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise) —

- (a) the management of a portfolio of securities or futures contracts; or
- (b) foreign exchange trading or leveraged foreign exchange trading for the purpose of managing the customer’s funds;

“leveraged foreign exchange trading” means —

- (a) foreign exchange trading on a margin basis whereby a person undertakes, as determined by the terms and conditions of the foreign exchange trading contract or arrangement —
 - (i) to make an adjustment between himself and another person according to whether a currency is worth more or less, as the case may be, in relation to another currency, or according to whether a currency index rises or falls in value, as the case may be, in relation to an agreed value;
 - (ii) to pay an amount of money determined or to be determined by reference to the change in value of a currency in relation to another currency, or by reference to the change in value of a currency index in relation to an agreed value; or

SECOND SCHEDULE — *continued*

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

but does not include any act performed for or in connection with a contract or an arrangement —

- (i) arranged by a bank that is licensed under the Banking Act (Cap. 19) or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
- (ii) by any person belonging to such class of persons, or carrying on such class or description of business, as may be prescribed by the Authority; or
- (iii) which is a futures contract,

or such a proposed contract or arrangement;

“offer” or “offering” includes invitation to treat;

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

“providing custodial services for securities” means providing or agreeing to provide any service where the person providing the service has, under an arrangement with another person (the customer), possession or control of securities of the customer and carries out one or more of the following functions for the customer:

- (a) settlement of transactions relating to the securities;
- (b) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the securities;
- (c) paying tax or other costs associated with the securities;
- (d) exercising rights, including without limitation voting rights, attached to or derived from the securities;

 SECOND SCHEDULE — *continued*

(e) any other function necessary or incidental to the safeguarding or administration of the securities;

but does not include —

(i) the activities of a corporation which is a Depository as defined in Division 7A of Part IV of the Companies Act (Cap. 50);

(ii) the provision of services to a related corporation or connected person, so long as none of the securities is —

(A) held on trust for another person by the related corporation or connected person;

(B) held as a result of any custodial services provided by the related corporation or connected person to another person; or

(C) beneficially owned by any person other than the related corporation or connected person;

(iii) the provision of services by a nominee corporation which are solely incidental to the business of a nominee corporation; or

(iv) any other conduct as the Authority may prescribe;

“securities financing” means to directly or indirectly facilitate, by providing any credit facility, advance or loan —

(a) the subscription for securities or purchase of listed or to be listed on a securities market or such other securities as the Authority may prescribe; and

(b) where applicable, the continued holding of those securities, whether or not those securities are pledged as security for the credit facility, advance or loan, but does not include the provision of any credit facility, advance or loan —

(i) that forms part of an arrangement to underwrite or sub-underwrite securities;

(ii) to facilitate an acquisition of securities in accordance with the terms of a prospectus, regardless of whether the offer of securities is made in Singapore or elsewhere;

(iii) to a holder of a capital markets services licence to deal in securities or provide securities financing, or a financial institution, to facilitate acquisitions or holdings of securities;

(iv) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities;

(v) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member; or

SECOND SCHEDULE — *continued*

(vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities;

“trading in futures contracts” means (whether as principal or agent) —

(a) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to the purchase or sale of a futures contract; or

(b) soliciting or accepting any order for, or otherwise dealing in, a futures contract.

THIRD SCHEDULE

Section 82 (2)

SPECIFIED PERSONS

1. Any company registered under the Trust Companies Act (Cap. 336) whose carrying on of the business in that regulated activity is solely incidental to its carrying on of the business for which it is registered under that Act.

2. Any public statutory corporation established under any Act in Singapore.

3. Any —

(a) advocate and solicitor, law corporation, Formal Law Alliance or Joint Law Venture which is approved or registered under the Legal Profession Act (Cap. 161); or

(b) public accountant who is registered under the Accountants Act (Cap. 2A) or accounting corporation which is approved under that Act,

whose carrying on of the business in that regulated activity is solely incidental to the practice of law or accounting, as the case may be.

4. The Official Assignee in exercising his powers under the Bankruptcy Act (Cap. 20).

5. The Public Trustee in exercising his powers under the Public Trustee Act (Cap. 260).

6. A person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager or judicial manager.

7. Any approved trustee for a collective investment scheme as defined in section 289 whose carrying on of business in a regulated activity is solely incidental to its carrying on of activities as such approved trustee.

 THIRD SCHEDULE — *continued*

8.—(1) Any responsible person for a collective investment scheme as defined in section 283 in respect of its dealing in securities, if such responsible person is also —

- (a) a holder of a capital markets services licence for fund management; or
- (b) an exempt person in respect of fund management.

(2) Any responsible person for a collective investment scheme as defined in section 283 in respect of its dealing in securities which are units of that collective investment scheme, if the dealing is effected through any of the following persons:

- (a) a holder of a capital markets services licence to deal in securities;
- (b) an exempt person in respect of dealing in securities that are units of any collective investment scheme;
- (c) a financial adviser licensed under the Financial Advisers Act 2001 to market collective investment schemes; or
- (d) an exempt financial adviser as defined in the Financial Advisers Act 2001 in respect of marketing of collective investment schemes.

9. A foreign company whose carrying on of any regulated activity is effected through its related corporation licensed under this Act or exempted under section 99 (1) (a), (b), (c) or (d), under an arrangement approved by the Authority.

FOURTH SCHEDULE

Section 343

 CONSEQUENTIAL AMENDMENTS
 TO OTHER WRITTEN LAWS
*First column**Second column*

(1) Banking Act
(Chapter 19, 1999 Ed.)

(a) Section 4B (9)

Delete the words “Securities Industry Act (Cap. 289)” in the definition of “securities” and substitute the words “Securities and Futures Act 2001”.

(b) Section 29 (1)

Delete the words “any stock exchange in Singapore approved under the Securities Industry Act (Cap. 289) or any other stock exchange” in paragraph (d) (iii) and substitute the words “any securities exchange approved under the Securities and Futures Act 2001 or any other securities exchange”.

FOURTH SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>
(2) Central Provident Fund Act (Chapter 36, 1999 Ed.) Third Schedule	(i) Delete item 17. (ii) Delete item 36 and substitute the following item: “36. Securities and Futures Act 2001”.
(3) Commodity Trading Act (Chapter 48A, 1993 Ed.) (a) Section 2	Delete the words “unit trust or other interest to which Division 6 of Part IV of the Companies Act (Cap. 50) applies” in the 2nd, 3rd and 4th lines of the definitions of “commodity futures pool operator”, “commodity pool operator” and “spot commodity pool operator” and substitute in each case the words “collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001”.
(b) Section 3	(i) Delete subsection (1) and substitute the following subsection: “(1) This Act shall not apply to — (a) a futures market established and operated by the Singapore Exchange Derivatives Trading Ltd; (b) the Singapore Exchange Derivatives Clearing Ltd; (c) a futures market of a futures exchange approved by the Monetary Authority of Singapore under section 9 of the Securities and Futures Act 2001; (d) a corporation approved as a clearing house by the Monetary Authority of Singapore under section 51 of the Securities and Futures Act 2001;

FOURTH SCHEDULE — *continued**First column**Second column*

- (e) the holder of a capital markets services licence under the Securities and Futures Act 2001 in respect of trading in futures contracts or leveraged foreign exchange trading, and acting lawfully under that Act; and
- (f) any trading of futures contracts lawfully carried out under the Securities and Futures Act 2001, but only to the extent that the activities carried out by or in such futures market, corporation and holder of a capital markets services licence, and the trading of futures contracts, are regulated under the Securities and Futures Act 2001.”.
- (ii) Delete the words “Futures Trading Act” in subsection (2) and substitute the words “Securities and Futures Act 2001”.
- (4) Companies Act
(Chapter 50, 1994 Ed.)
- (a) Section 4
- (i) Delete the definitions of “profile statement”, “promoter”, “replacement document”, “supplementary document” and “trustee corporation” in subsection (1).
- (ii) Delete the words “stock exchange” in the definition of “listed corporation” and substitute the words “securities exchange” in subsection (1).
- (iii) Delete the words “any interest as defined in section 107” in the penultimate and last lines of the definition of “marketable securities” in subsection (1) and substitute the words “units in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001”.

FOURTH SCHEDULE — *continued**First column**Second column*

- (iv) Delete the definition of “prospectus” in subsection (1) and substitute the following definition:
- “ “prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document —
- (a) inviting applications or offers from the public to subscribe for or purchase; or
- (b) offering to the public for subscription or purchase,
- any shares in or debentures of, or any units of shares in or debentures of, a corporation or proposed corporation, and includes any document deemed to be a prospectus under section 256 or 257 of the Securities and Futures Act 2001, but does not include —
- (i) a profile statement; or
- (ii) any material, advertisement or publication which is authorised by section 251 (other than subsection (5)) of that Act;”.
- (v) Delete the words “prospectus or” in subsection (3).
- (vi) Delete the marginal note in subsection (4) and substitute the following subsection heading:
- “When statement included in statement in lieu of prospectus”.
- (vii) Delete the words “prospectus or” in the 2nd line of subsection (4).

FOURTH SCHEDULE — *continued**First column**Second column*

(viii) Delete subsection (5) and substitute the following subsections:

“(5) For the purposes of this Act, any invitation to the public to deposit money with or lend money to a corporation (other than a prescribed corporation referred to in section 239 (4) of the Securities and Futures Act 2001) shall be deemed to be an invitation to subscribe for or purchase debentures of the corporation.

(5A) For the purposes of this Act, any document that is issued or intended or required to be issued by a corporation acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the corporation in respect of any money that is or may be deposited with or lent to the corporation in response to such an invitation shall be deemed to be a debenture.”.

(ix) Delete subsection (6).

(b) Section 7

Delete subsection (3) and substitute the following subsection:

“(3) A unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001 —

(a) that is issued or offered to the public for subscription or purchase, or for which the public is invited to subscribe for or purchase, and that has been so subscribed or purchased; or

(b) that is issued for the purpose of an offer to the public by and is held by the manager concerned within the meaning of section 283 of that Act,

does not constitute an interest in a share.”.

FOURTH SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>
(c) Section 59	<p>Insert, immediately after subsection (2), the following subsections:</p> <p>“(3) Every director of a company who knowingly contravenes or permits or authorises the contravention of subsection (1) shall —</p> <p>(a) be guilty of an offence; and</p> <p>(b) be liable in addition to the penalty or punishment for the offence to compensate the company and allottee respectively for any loss, damages or costs which the company or allottee has sustained or incurred thereby.</p> <p>(4) No proceedings for the recovery of any compensation referred to in subsection (3) (b) shall be commenced after the expiration of 2 years from the date of the allotment.”.</p>
(d) Section 79 (2)	<p>Delete the words “stock exchange as defined in the Securities Industry Act” in paragraph (a) and substitute the words “securities exchange as defined in the Securities and Futures Act 2001”.</p>
(e) Section 92 (1)	<p>Delete the words “stock exchange (as defined in the Securities Industry Act)” in the 2nd and 3rd lines and substitute the words “securities exchange as defined in the Securities and Futures Act 2001”.</p>
(f) Section 100	<p>Insert, immediately after subsection (2), the following subsection:</p> <p>“(3) Subsection (1) shall not apply in relation to any debenture that is offered to the public for subscription or purchase.”.</p>
(g) Section 130A	<p>(i) Delete the definition of “Stock Exchange” and substitute the following definition:</p> <p>““Securities Exchange” means the Singapore Exchange Securities Trading Limited;”.</p> <p>(ii) Delete the words “established by the Stock Exchange,” in the definition of “Depository”.</p>

FOURTH SCHEDULE — *continued**First column**Second column*

- (iii) Delete the words “Stock Exchange” wherever they appear in the definitions of “depository agent”, “listed securities” and “securities” and substitute the words “Securities Exchange”.
- (h) Section 130M Repeal and substitute the following section:
“Non-application of certain provisions in sections 21 and 76A
130M. Sections 21 and 76A, insofar as those sections provide that a transfer or contract of sale of shares or debentures in contravention of either section shall be void, shall not apply to any disposition of book-entry securities; but a Court, on being satisfied that a disposition of book-entry securities would in the absence of this section be void may, on the application of the Registrar or any other person, order the transfer of the shares acquired in contravention of either of those sections.”.
- (i) Section 130N (23) Delete the words “Stock Exchange” and substitute the words “Securities Exchange”.
- (j) Section 130O (i) Delete the words “Securities Industry Act” in the last line of subsection (1) and substitute the words “Securities and Futures Act 2001”.
(ii) Delete the words “section 18 (authority to approve amendments to rules) and section 20 (1) (power of Court to enforce rules) of the Securities Industry Act” in the 2nd, 3rd and 4th lines of subsection (2) and substitute the words “section 17 (Authority to be notified of amendments to business rules or listing rules) and section 18 (power of court to order observance of or enforce business rules or listing rules) of the Securities and Futures Act 2001”.

FOURTH SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>
(k) Section 145 (6)	Insert, immediately after the words “Finance Companies Act”, the words “, section 57 of the Financial Advisers Act 2001, section 31, 35ZJ or 41 (1) (b) of the Insurance Act (Cap. 142) or section 22, 33, 44, 64 or 97 of the Securities and Futures Act 2001”.
(l) Section 164 (13)	Delete the words “an interest within the meaning of section 107” in paragraph (a) and substitute the words “a unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001”.
(m) Section 165 (6)	Delete paragraph (a) and substitute the following paragraph: “(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001; and”.
(n) Section 166 (1)	Delete the words “Securities Industry Act” in the 4th line and substitute the words “Securities and Futures Act 2001”.
(o) Section 168 (2)	Delete the words “section 213” in the last line and substitute the words “any requirement of law relating to take-over offers or any requirement of the Take-over Code referred to in section 139 of the Securities and Futures Act 2001”.
(p) Sections 61 (1) (a), 76C (1), 76D (1), 76E (1), 166 (1), 201 (1) (a), 201B (10), 203A (8), 216A (1) (definition of “company”) and 244 (5) and (6)	Delete the words “stock exchange” wherever they appear and substitute in each case the words “securities exchange”.

FOURTH SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>
(q) Part VII	Delete the Part heading and substitute the following heading: “ARRANGEMENTS AND RECONSTRUCTIONS”.
(r) Section 402 (1)	(i) Insert the word “or” at the end of paragraph (a). (ii) Delete the word “; or” at the end of paragraph (b) and substitute a comma. (iii) Delete paragraph (c).
(s) Section 404	Delete subsections (1) and (2).
(t) Section 411	Delete paragraph (ba).
(u) Second Schedule	(i) Delete item 24 and substitute the words “On lodging a statement in lieu of prospectus”. (ii) Delete items 25, 33F and 33G.
(v) Ninth Schedule Paragraph 6 (5)	Delete the words “the Singapore Stock Exchange” in the 2nd and 3rd lines and substitute the words “a securities exchange as defined in the Securities and Futures Act 2001”.
(5) Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 65A, 2000 Ed.) Section 2 (1)	Delete paragraphs (d) and (e) of the definition of “financial institution” and substitute the following paragraphs: “(d) the holder of a capital markets services licence under the Securities and Futures Act 2001; (e) a licensed financial adviser under the Financial Advisers Act 2001;”.

FOURTH SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>
<p>(6) Criminal Law (Temporary Provisions) Act (Chapter 67, 2000 Ed.) First Schedule — Part 1</p>	<p>Delete item 22 and substitute the following item: “22. Services relating to dealings in securities, trading in futures contracts and leveraged foreign exchange trading provided by the holder of a capital markets services licence under the Securities and Futures Act 2001.”.</p>
<p>(7) Exchanges (Demutualisation and Merger) Act (Chapter 99B, 2000 Ed.)</p>	<p>(a) Section 2 Delete the definitions of “auditor”, “record” and “rules”.</p>
<p>(b) Section 8 (3)</p>	<p>Delete the words “Divisions 1 and 5 of Part IV of the Companies Act” and substitute the words “Subdivision 2 of Division 1 of Part XIII of the Securities and Futures Act 2001”.</p>
<p>(c) Section 11</p>	<p>Delete subsection (1) and substitute the following subsection: “(1) Notwithstanding sections 139 or 140 of the Securities and Futures Act 2001 (relating to take-overs offers) and the Take-over Code referred to in section 139 (2) of that Act (referred to in this section as the Code), the transferee holding company’s shares held by the special purpose company under section 8 (1) shall not be taken into account in determining whether — (a) the special purpose company; (b) any other company that is deemed by virtue of section 6 of the Companies Act (Cap. 50) to be related to the special purpose company; or (c) a company acting in concert with the company referred to in paragraph (a) or (b), as defined in the Code,</p>

FOURTH SCHEDULE — *continued**First column**Second column*

has acquired shares which carry the right to exercise or control the exercise of the votes attached to the transferee holding company's shares for the purposes of section 139 or 140 of the Securities and Futures Act 2001 or the Code.”.

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| (d) Sections 13, 14, 15
and 16 | Repeal. |
| (8) Finance Companies Act
(Chapter 108, 2000 Ed.)
Section 23 (5) | <p>(i) Delete the word “stock” in the 7th line of paragraph (c) and substitute the word “securities”.</p> <p>(ii) Insert, immediately after the word “approve” in the penultimate line of paragraph (c), the words “under the Securities and Futures Act 2001”.</p> |
| (9) Income Tax Act
(Chapter 134, 1999 Ed.)
(a) Section 2 (1) | <p>Insert, immediately after the definition of “executor”, the following definition:</p> <p>“ “Fund manager” or “fund manager” means a company holding a capital markets services licence under the Securities and Futures Act 2001 for fund management or that is exempted under that Act from holding such a licence;”.</p> |
| (b) Section 43A (1) | <p>Delete paragraph (c) and substitute the following paragraph:</p> <p>“(c) a company holding a capital markets services licence under the Securities and Futures Act 2001 to deal in securities or that is exempted under that Act from holding such a licence.”.</p> |

FOURTH SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>
(10) Monetary Authority of Singapore Act (Chapter 186, 1999 Ed.) Section 39A	Delete paragraph (a) and substitute the following paragraph: “(a) appear in any civil proceedings on behalf of the Authority under the Securities and Futures Act 2001, including proceedings referred to in section 232 of that Act; and”.
(11) Moneylenders Act (Chapter 188, 1985 Ed.) Section 2	(i) Delete the word “and” at the end of paragraph (d) of the definition of “moneylender”. (ii) Delete the full-stop at the end of paragraph (e) of the definition of “moneylender”, and insert the words “; and” and insert immediately thereafter, the following paragraph: “(f) any person licensed under the Securities and Futures Act 2001.”.
(12) Singapore Broadcasting Authority Act (Chapter 297, 1995 Ed.) Section 52	(i) Delete the words “Companies Act” in the penultimate and last lines of subsection (1) and substitute the words “Securities and Futures Act 2001”. (ii) Delete paragraph (a) of subsection (3) and substitute the following paragraph: “(a) that the prospectus has been lodged with the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186) under section 240 of the Securities and Futures Act 2001; and”.

FOURTH SCHEDULE — *continued**First column**Second column*

- (iii) Delete the words “Companies Act” in the marginal note and substitute the words “Securities and Futures Act 2001.”.
- (13) Trustees Act
(Chapter 337, 1999 Ed.)
Section 6 (1)
- Delete the words “Companies Act (Cap. 50)” and substitute the words “Securities and Futures Act 2001”.
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