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SECURITIES AND FUTURES ACT
(CHAPTER 289)

SECURITIES AND FUTURES
(CLEARING FACILITIES)
REGULATIONS 2013

ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY

Regulation

1. Citation and commencement
2. Definitions
3. Forms
4. Fees
5. Keeping of books and other information

PART II

APPROVAL AS APPROVED CLEARING HOUSE AND
RECOGNITION AS RECOGNISED CLEARING HOUSE

6. Application for approval or recognition
7. Minimum requirements for approval or recognition
8. Criteria for deciding whether applicant should be approved as approved clearing house or recognised as recognised clearing house
9. Application for change in status
10. Cancellation of approval or recognition

PART III

REGULATION OF APPROVED CLEARING HOUSES

*Division 1 — Obligations and Matters relating to
Approved Clearing Houses*

11. Obligation to notify Authority of certain matters

Regulation

12. Obligation to seek Authority's approval
13. Obligation of members with respect to money or assets received from customers
14. Obligation to submit periodic reports
15. Exceptions to obligation to maintain confidentiality
16. Business continuity plan
17. Recovery and resolution plan
18. Provision of information
19. Transmission and storage of user information
20. Determination of position limits
21. Regulation of clearing fees of specified approved clearing houses

Division 2 — Customers' Money and Other Assets

22. Application of this Division
23. Segregation of customers' money held by approved clearing house
24. Permissible use of customers' money and assets by approved clearing house
25. Permissible investment of customers' money by approved clearing house
26. Daily computation of customers' money and assets
27. Verification of money and assets placed with approved clearing house
28. Reconciliation of money and assets placed with approved clearing house

Division 3 — Business Rules of Approved Clearing Houses

29. Content of business rules of approved clearing house
30. Amendment of business rules

Division 4 — Matters requiring Approval of Authority

31. Application and criteria for approval to acquire substantial shareholding
32. Application for approval of chairman, chief executive officer, director and key persons
33. Criteria for approval of chairman, chief executive officer, director and key persons

PART IV

REGULATION OF RECOGNISED CLEARING HOUSES

*Division 1 — Obligations and Matters relating to
Recognised Clearing Houses*

Regulation

34. Obligation to notify Authority of certain matters
35. Obligation of members with respect to money or assets received from customers
36. Obligation to submit periodic reports
37. Exceptions to obligation to maintain confidentiality
38. Business continuity plan
39. Provision of information
40. Transmission and storage of user information
41. Supervision of participants
42. Regulation of clearing fees of specified recognised clearing houses

Division 2 — Customers' Money and Other Assets

43. Application of this Division
44. Segregation of customers' money held by recognised clearing house
45. Permissible use of customers' money and assets by recognised clearing house
46. Permissible investment of customers' money by recognised clearing house
47. Daily computation of customers' money and assets
48. Verification of money and assets placed with recognised clearing house
49. Reconciliation of money and assets placed with recognised clearing house

PART V

INSOLVENCY

50. Application of Division 4 of Part III of Act

PART VI

MISCELLANEOUS

51. Criteria for determining whether officer failed to discharge duties or functions

Regulation

- 52. Offences
 - 53. Non-applicability of section 339(2) of Act
 - 54. Revocation
The Schedules
-

In exercise of the powers conferred by sections 60, 77, 81Q, 339(3) and 341 of the Securities and Futures Act, the Monetary Authority of Singapore hereby makes the following Regulations:

PART I**PRELIMINARY****Citation and commencement**

1. These Regulations may be cited as the Securities and Futures (Clearing Facilities) Regulations 2013 and shall come into operation on 1st August 2013.

Definitions

2.—(1) In these Regulations, unless the context otherwise requires —

“annual report” means the audited profit and loss accounts, audited balance-sheet and auditors’ report, however described;

“business day”, except for the purposes of regulations 26 and 47, has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“position”, in relation to a futures contract, means a futures contract which is outstanding and which has not been liquidated —

(a) by an off-setting transaction;

(b) by delivery of the commodity underlying the futures contract;

(c) through settlement of the futures contract in accordance with the business rules or practices of a futures market; or

(d) by substituting the futures contract for a cash commodity;

“settlement bank” means an entity approved by an approved clearing house or a recognised clearing house to settle payment obligations arising from the transactions of the participants of the approved clearing house or recognised clearing house (as the case may be) that are cleared or settled by the approved clearing house or recognised clearing house (as the case may be);

“specified transaction” means any derivatives contract.

(2) Any word or expression used in these Regulations which is defined in section 48 of the Act shall, unless the context otherwise requires, have the same meaning as in that section.

Forms

3.—(1) The forms to be used for the purposes of Part III of the Act and these Regulations are those set out at the Authority’s Internet website at <http://www.mas.gov.sg> (under “Regulations and Financial Stability”, “Regulations, Guidance and Licensing”, “Securities, Futures and Fund Management”), and any reference in these Regulations to a numbered form shall be construed as a reference to the current version of the form bearing the corresponding number which is displayed at that website and described in the First Schedule.

(2) Any document required to be lodged with the Authority under any provision of Part III of the Act or these Regulations shall be lodged in the relevant form and in the manner specified in the website referred to in paragraph (1), or in such other manner as the Authority may specify from time to time.

(3) All forms used for the purposes of Part III of the Act and these Regulations shall be completed in the English language and in accordance with such directions as may be specified in the form or by the Authority.

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- (4) The Authority may refuse to accept any form if —
- (a) it is not completed in accordance with this regulation; or
 - (b) it is not accompanied by the relevant fee referred to in regulation 4.
- (5) Where strict compliance with any form is not possible, the Authority may allow for the necessary modifications to be made to that form, or for the requirements of that form to be complied with in such other manner as the Authority thinks fit.

Fees

4.—(1) The fees specified in the Second Schedule shall be payable to the Authority for the purposes specified therein and, subject to section 53(2) of the Act, shall not be refundable.

(2) Payment of fees may be effected, through such electronic funds transfer system as the Authority may designate from time to time, by directing the transfer of funds electronically from the bank account of the payer to a bank account designated by the Authority.

Keeping of books and other information

5. Every approved clearing house and every recognised clearing house shall ensure that all relevant books, and all other information as may be required by the Authority for the purposes of the Act, are kept for a minimum of 5 years.

PART II

APPROVAL AS APPROVED CLEARING HOUSE AND RECOGNITION AS RECOGNISED CLEARING HOUSE

Application for approval or recognition

6. For the purposes of section 50(3) of the Act, an application to be approved as an approved clearing house or recognised as a recognised clearing house shall be made in Form 1 and shall be lodged with the Authority together with —

- (a) Forms 2 and 3; and

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- (b) each relevant annex and all relevant information specified in those Forms.

Minimum requirements for approval or recognition

7.—(1) For the purposes of section 51(7) of the Act, the Authority shall not approve an applicant as an approved clearing house, unless the applicant has demonstrated to the Authority's satisfaction that —

- (a) the applicant is able to meet the obligations of, and comply with the requirements imposed on, an approved clearing house under the Act; and
- (b) the applicant is able to maintain a minimum base capital of at least \$10,000,000.

(2) For the purposes of section 51(7) of the Act, the Authority shall not recognise an applicant as a recognised clearing house, unless the applicant has demonstrated to the Authority's satisfaction that —

- (a) the applicant is able to meet the obligations of, and comply with the requirements imposed on, a recognised clearing house under the Act; and
- (b) if the applicant is a Singapore corporation, the applicant is able to maintain a minimum base capital of at least \$5,000,000.

(3) In this regulation, “base capital”, in relation to an applicant, means the amount remaining after deducting any interim loss in the latest accounts of the applicant, and any dividend that has been declared since the latest audited accounts of the applicant, from the sum of the following items:

- (a) the paid-up ordinary share capital of the applicant in the latest accounts of the applicant;
- (b) the paid-up irredeemable and non-cumulative preference share capital of the applicant in the latest accounts of the applicant;
- (c) any unappropriated profit or loss in the latest audited accounts of the applicant; and

- (d) any reserves set aside by the applicant solely for the purposes of the applicant's clearing fund.

Criteria for deciding whether applicant should be approved as approved clearing house or recognised as recognised clearing house

8.—(1) Without prejudice to section 51(10) of the Act, for the purposes of section 52(1)(a) of the Act, the Authority may approve a Singapore corporation as an approved clearing house under section 51(1)(a) of the Act if —

- (a) the Authority is satisfied that a disruption in the operations of a clearing facility to be operated by the corporation could —
- (i) trigger, cause or transmit further systemic disruptions to the capital markets or financial system of Singapore; or
 - (ii) affect public confidence in the capital markets, financial institutions or financial system of Singapore; or
- (b) where sub-paragraph (a) does not apply —
- (i) the corporation has applied to be an approved clearing house under section 50(1)(a) of the Act; and
 - (ii) the Authority is satisfied that the corporation is able to meet the obligations of, and comply with the requirements imposed on, an approved clearing house under the Act.

(2) Without prejudice to section 51(10) of the Act, for the purposes of section 52(1)(a) of the Act, the Authority may recognise a Singapore corporation as a recognised clearing house under section 51(1)(b) of the Act if, and only if, both sub-paragraphs (a) and (b) of paragraph (1) do not apply.

(3) The Authority may have regard to the following matters in determining whether the criteria referred to in paragraph (1)(a) have been satisfied:

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- (a) the size and structure, or proposed size and structure, of the clearing facility to be operated by the corporation;
 - (b) the nature of the services provided, or to be provided, by the clearing facility to be operated by the corporation;
 - (c) the nature of the securities, futures contracts or derivatives contracts cleared or settled, or to be cleared or settled, on the clearing facility to be operated by the corporation;
 - (d) the nature of the investors or participants, or proposed investors or participants, who may use or have an interest in the clearing facility to be operated by the corporation;
 - (e) whether the corporation is regulated by the Authority under the Act or any other written law;
 - (f) the persons who may be affected in the event that the corporation, or the clearing facility to be operated by the corporation, runs into difficulties;
 - (g) the interests of the public; and
 - (h) any other circumstances that the Authority may consider relevant.

Application for change in status

9. For the purposes of section 54(2) of the Act, an application under section 54(1) of the Act by a Singapore corporation which is an approved clearing house or a recognised clearing house to change its status shall be made in Form 4.

Cancellation of approval or recognition

10. For the purposes of section 55(2) of the Act, an application under section 55(1) of the Act by an approved clearing house or a recognised clearing house to cancel its approval as an approved clearing house or recognition as a recognised clearing house, as the case may be, shall be made —

- (a) in writing; and
- (b) no later than 3 months before the date on which the approved clearing house or recognised clearing house, as

the case may be, intends to cease operating its clearing facility or, where it operates more than one clearing facility, the last of its clearing facilities.

PART III

REGULATION OF APPROVED CLEARING HOUSES

Division 1 — Obligations and Matters relating to Approved Clearing Houses

Obligation to notify Authority of certain matters

11.—(1) For the purposes of section 58(1)(f)(i) of the Act, an approved clearing house shall, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of the circumstance:

- (a) any civil or criminal legal proceeding instituted against the approved clearing house, whether in Singapore or elsewhere;
- (b) any disciplinary action taken against the approved clearing house by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;
- (c) any change to the regulatory requirements imposed on the approved clearing house by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;
- (d) any admission or cessation of a bank to act as a settlement bank for the approved clearing house;
- (e) any failure by any party to debit or credit the relevant accounts for the purposes of the settlement of transactions, including the settlement of money, securities or physically delivered futures contracts or derivatives contracts;
- (f) any disruption of or delay in any clearing or settlement procedures of the approved clearing house, including those resulting from any system failure.

(2) Where a circumstance under paragraph (1)(a), (b), (e) or (f) has occurred, the approved clearing house shall, in addition to the notice required under paragraph (1), within 14 days after the occurrence of the circumstance or such longer period as the Authority may permit, submit a report to the Authority of the circumstances relating to the occurrence, the remedial actions taken at the time of the occurrence, and the subsequent follow-up actions that the approved clearing house has taken or intends to take.

(3) An approved clearing house shall, within a reasonable period of time prior to entering into negotiations to establish a linkage, arrangement or co-operative arrangement with a person (being a person establishing or operating any other clearing facility, any market or any trade repository), give the Authority notice of such intent to enter into negotiations.

(4) An approved clearing house shall, if it intends to make a declaration that a member of the approved clearing house has defaulted or to commence default proceedings against any member of the approved clearing house, immediately give the Authority notice of such intent.

(5) In paragraph (3), “co-operative arrangement” shall not include —

- (a) any joint development of products and services;
- (b) any joint marketing efforts between the approved clearing house and the person referred to in that paragraph in promoting the services of any clearing facility, market or trade repository established or operated by the approved clearing house or the person; or
- (c) any memorandum of understanding for the exchange of information.

Obligation to seek Authority’s approval

12.—(1) An approved clearing house shall seek the approval of the Authority —

- (a) prior to making any change to the risk management frameworks of the approved clearing house, including the

types of collateral accepted by it, the methodologies for collateral valuation and the determination of margins to manage its risk exposure to its participants, and the size of the financial resources available to it to support a default of its member; and

(b) prior to commencing any linkage, arrangement or co-operative arrangement referred to in regulation 11(3).

(2) The Authority may grant its approval referred to in paragraph (1) subject to such conditions and restrictions as the Authority may think fit, and the approved clearing house shall comply with those conditions and restrictions.

(3) For the purposes of paragraph (1)(a), the financial resources available to an approved clearing house to support a default of its member shall not include margins held with the approved clearing house.

Obligation of members with respect to money or assets received from customers

13. An approved clearing house shall ensure that every member thereof which accepts from that member's customers any money or assets deposited or paid for or in relation to a contract in a specified transaction shall inform each customer concerned that the customer can choose to have the books for any money or assets deposited or paid for or in relation to the contracts of the customer separated from the books for money or assets deposited or paid for or in relation to the contracts of any other customer or customers of that member.

Obligation to submit periodic reports

14.—(1) For the purposes of section 62 of the Act, an approved clearing house shall submit to the Authority —

(a) within 3 months after the end of the financial year of the approved clearing house or such longer period as the Authority may permit, a copy each of —

(i) the annual report and directors' report of the approved clearing house, prepared in accordance

with the provisions of the Companies Act (Cap. 50);
and

- (ii) the auditors' long form report of the approved clearing house;
- (b) within 45 days after the end of each of the first 3 quarters of the financial year of the approved clearing house or such longer period as the Authority may permit, a copy each, in such form as the Authority may approve, of —
- (i) the profit and loss accounts of the approved clearing house for the preceding quarter; and
 - (ii) the balance-sheet of the approved clearing house for the preceding quarter;
- (c) within 3 months after the end of the financial year of the approved clearing house or such longer period as the Authority may permit, a report on how the approved clearing house has discharged its responsibilities under the Act during that financial year;
- (d) when required by the Authority, a report relating to the business of the approved clearing house; and
- (e) when required by the Authority, such other report as the Authority may require for the proper administration of the Act.
- (2) The auditors' long form report referred to in paragraph (1)(a)(ii) shall include the findings and recommendations of the auditors, if any, on —
- (a) the internal controls of the approved clearing house; and
 - (b) any non-compliance by the approved clearing house with —
 - (i) any provision of the Act;
 - (ii) any direction issued by the Authority under the Act;
or
 - (iii) any other relevant written law.

Exceptions to obligation to maintain confidentiality

15.—(1) For the purposes of section 64(2)(a) of the Act, section 64(1) of the Act shall not apply to the disclosure of user information by an approved clearing house or its officers or employees for the following purposes or in the following circumstances:

- (a) the disclosure of user information is necessary for the making of a complaint or report under any written law for an offence alleged or suspected to have been committed under such written law;
- (b) the disclosure of user information is permitted for such purpose specified in writing by the user or, where the user is deceased, by his appointed personal representative;
- (c) the disclosure of user information is necessary for the execution by the approved clearing house of a transaction in any securities, futures contracts or derivatives contracts or for the clearing or settlement of any such transaction, and such disclosure is made only to another user which is —
 - (i) a party to the transaction; or
 - (ii) a member of an approved exchange, an approved clearing house or a recognised clearing house through which that transaction is executed, cleared or settled;
- (d) where there are any disciplinary proceedings of the approved clearing house —
 - (i) the disclosure of the user information is necessary in those disciplinary proceedings, and reasonable steps are taken to ensure that user information disclosed to any third person is used strictly for the purpose for which the user information is disclosed; or
 - (ii) the disclosure of the user information is necessary for the publication, in any form or manner, of those disciplinary proceedings and the outcome thereof;

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- (e) the user information disclosed is already in the public domain;
 - (f) the disclosure of user information is made in connection with an arrangement for protection against a default by a member of the approved clearing house to another member of the approved clearing house who is identified by the approved clearing house for the purposes of carrying out or undertaking the obligations under the arrangement;
 - (g) the disclosure of user information is made to a member of the approved clearing house in connection with an arrangement for the transfer to that member of any contract from another member of the approved clearing house who is in default;
 - (h) the disclosure of user information is made in connection with —
 - (i) the outsourcing or proposed outsourcing of any function of the approved clearing house to a third party;
 - (ii) the engagement or potential engagement of a third party by the approved clearing house to create, install or maintain systems of the approved clearing house; or
 - (iii) the appointment or engagement of an auditor, a lawyer, a consultant or any other professional by the approved clearing house under a contract for service;
 - (i) the disclosure of user information is necessary for, or is required by the Public Trustee or the Commissioner of Estate Duties in the course of —
 - (i) an application for a grant of probate or letters of administration or the resealing thereof in relation to the estate of a deceased user; or
 - (ii) the administration of the estate of a deceased user; or
 - (j) the disclosure of user information is made in connection with —

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- (i) the bankruptcy of a user who is an individual; or
 - (ii) the winding up or receivership of a user which is a body corporate.
- (2) Where user information is disclosed under paragraph (1)(f), (g) or (h), the approved clearing house shall —
- (a) maintain, and make available for inspection by the Authority, a record of —
 - (i) the circumstances relating to the disclosure of the user information; and
 - (ii) the particulars of —
 - (A) in the case of a disclosure of user information under paragraph (1)(f), the arrangement for protection;
 - (B) in the case of a disclosure of user information under paragraph (1)(g), the arrangement for the transfer;
 - (C) in the case of a disclosure of user information under paragraph (1)(h)(i), the outsourcing or proposed outsourcing of the function of the approved clearing house;
 - (D) in the case of a disclosure of user information under paragraph (1)(h)(ii), the engagement or potential engagement of the third party; or
 - (E) in the case of a disclosure of user information under paragraph (1)(h)(iii), the appointment or engagement of the auditor, lawyer, consultant or other professional;
 - (b) disclose the user information only in so far as this is necessary for the relevant purpose; and
 - (c) take reasonable steps to ensure that —
 - (i) the user information disclosed is used by the person to whom the disclosure is made strictly for the relevant purpose; and

- (ii) the user information is not disclosed by that person to any other person, except with the consent of the approved clearing house.

(3) Where the disclosure to a body corporate of user information is permitted for any purpose or in any circumstance under paragraph (1), the user information may be disclosed only to those officers of the body corporate to whom the disclosure is necessary for the relevant purpose.

(4) In paragraphs (2) and (3), “relevant purpose” means —

- (a) in the case of a disclosure of user information under paragraph (1)(f), the carrying out of the arrangement for protection;
- (b) in the case of a disclosure of user information under paragraph (1)(g), the carrying out of the arrangement for the transfer;
- (c) in the case of a disclosure of user information under paragraph (1)(h)(i), facilitating the outsourcing or proposed outsourcing of the function of the approved clearing house;
- (d) in the case of a disclosure of user information under paragraph (1)(h)(ii), facilitating the engagement or potential engagement of the third party; and
- (e) in the case of a disclosure of user information under paragraph (1)(h)(iii), facilitating the appointment or engagement of the auditor, lawyer, consultant or other professional.

Business continuity plan

16.—(1) An approved clearing house shall maintain at all times a plan of action (referred to in this regulation as a business continuity plan) setting out the procedures and establishing the systems necessary to restore, in the event of any disruption to the processes of any clearing facility which it operates, safe and efficient operations of that clearing facility.

(2) An approved clearing house shall review and test the procedures and systems referred to in paragraph (1) on such regular basis as may be specified in the business continuity plan.

(3) An approved clearing house shall immediately notify the Authority of any activation of its business continuity plan and of any action taken or intended to be taken to restore safe and efficient operations of its clearing facility.

(4) An approved clearing house shall, within 14 days or such longer period as may be permitted by the Authority, inform the Authority of any material change to the business continuity plan and shall, if requested by the Authority, submit a copy of the new or amended plan to the Authority.

Recovery and resolution plan

17.—(1) An approved clearing house shall maintain at all times a plan of action (referred to in this regulation as a recovery and resolution plan) setting out the procedures and establishing the systems necessary, in the event of financial pressures or stress —

- (a) to restore the ability of the approved clearing house to operate as a going concern; and
- (b) to ensure the orderly winding up of the approved clearing house.

(2) An approved clearing house shall review the procedures and systems referred to in paragraph (1) on such regular basis as may be specified in the recovery and resolution plan.

Provision of information

18. An approved clearing house shall make available to any person upon his request, or publish in a manner that is accessible, information on —

- (a) all services of the approved clearing house;
- (b) all products that may be cleared or settled by the approved clearing house; and

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- (c) the applicable fees and charges of the approved clearing house.

Transmission and storage of user information

19.—(1) An approved clearing house shall take all reasonable measures to maintain the integrity and security of the transmission and storage of its user information.

(2) An approved clearing house shall immediately notify the Authority of —

- (a) any compromise of the integrity or security of the transmission or storage of any user information of the approved clearing house; and
- (b) any action taken or intended to be taken to restore the integrity and security of the transmission and storage of that user information.

Determination of position limits

20.—(1) For the purposes of determining whether a person has exceeded any position limit established or varied by an approved clearing house under section 59 of the Act in respect of a futures contract, the approved clearing house shall take into account —

- (a) any position held by any other person directly or indirectly controlled by the first-mentioned person;
- (b) any position held by any other person acting, pursuant to an express or implied agreement or understanding, as if such position were held by the first-mentioned person; and
- (c) any position held in respect of options on the futures contract, calculated on a futures equivalent basis.

(2) Where an approved clearing house has determined that any person has exceeded any position limit established or varied by the approved clearing house, the approved clearing house shall require that person or any other person whose position has been taken into account under paragraph (1)(a) or (b) in that determination, or both of those persons —

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- (a) to trade under such conditions and restrictions as the approved clearing house considers necessary to ensure compliance with that position limit; and
 - (b) if the approved clearing house considers it necessary for the purpose under sub-paragraph (a), to take one or more of the following actions:
 - (i) cease any further increase in his or their positions;
 - (ii) liquidate his or their positions to comply with that position limit within such time as the approved clearing house may determine;
 - (iii) be subject to higher margin requirements in respect of his or their positions.

(3) In paragraph (1)(c), “futures equivalent basis” means the basis by which an option is adjusted by the risk factor or delta coefficient of that option, such risk factor or delta coefficient being calculated at the close of trading on the last day on which that option was traded or at such other time as the approved clearing house may determine.

Regulation of clearing fees of specified approved clearing houses

21.—(1) An approved clearing house specified in Part I of the Third Schedule shall not, without the prior approval of the Authority under paragraph (4) —

- (a) impose any clearing fee on its participants in respect of any service or services provided by the approved clearing house; or
- (b) modify, restructure or otherwise change any existing clearing fee imposed on its participants.

(2) An application to the Authority for approval under paragraph (4) shall be made in Form 5.

(3) Where an approved clearing house has made an application under paragraph (2), the Authority may require the approved clearing house to furnish the Authority with such information or documents as

the Authority considers necessary in relation to the application, and the approved clearing house shall comply with that requirement.

(4) The Authority shall, within 20 business days after receiving a completed application under paragraph (2), by notice in writing to the approved clearing house, either grant the approval or notify the approved clearing house of the Authority's intention to refuse to grant the approval.

(5) The Authority may, by notice in writing to the approved clearing house, extend the period referred to in paragraph (4) —

- (a) in the first instance, to a period of up to 35 business days after receiving the completed application under paragraph (2); or
- (b) upon the expiry of the period referred to in sub-paragraph (a), for such further period as the Authority thinks fit.

(6) Before the Authority extends under paragraph (5)(b) the period referred to in paragraph (4), the Authority shall give the approved clearing house an opportunity to be heard.

(7) In deciding whether to grant or refuse approval under paragraph (4), the Authority may have regard to the following matters:

- (a) the effect of the proposed imposition of or change in the clearing fee on —
 - (i) competition in the financial services industry of Singapore; and
 - (ii) access to clearing or settlement services in Singapore;
- (b) the cost of providing the service to which the proposed imposition or change applies;
- (c) the effect of the proposed imposition or change on the cost and efficiency of trading, clearing and settlement in Singapore of the securities, futures contracts or derivatives contracts specified in Part II of the Third Schedule; and

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- (d) the effect of the proposed imposition or change on the objectives of the Authority as specified in section 4(1)(b) of the Monetary Authority of Singapore Act (Cap. 186).
- (8) The Authority may grant its approval under paragraph (4) subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing to the approved clearing house, including conditions or restrictions relating to —
- (a) the period for which the approval of a clearing fee will be in force;
 - (b) the circumstances under which, or date by which, upon the expiry of the period referred to in sub-paragraph (a), the approved clearing house will be required to submit another application under paragraph (2) for approval of the clearing fee; and
 - (c) the circumstances under which, or the changes in the clearing fee for which, upon the expiry of the period referred to in sub-paragraph (a), the approved clearing house will not be required to submit another application under paragraph (2) for approval of a change in the clearing fee.
- (9) The Authority shall not refuse to grant its approval under paragraph (4) without giving the approved clearing house an opportunity to be heard.
- (10) An approved clearing house may only charge a clearing fee approved by the Authority under paragraph (4) for the service or services in respect of which that fee was approved.
- (11) Any clearing fee charged by the company known as The Central Depository (Pte) Limited immediately before 1st August 2013 shall be deemed to be a clearing fee approved by the Authority under paragraph (1), subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing.
- (12) In this regulation, “clearing fee” means any fee, tariff or compensation for clearing or settlement of transactions in the securities, futures contracts or derivatives contracts specified in Part II of the Third Schedule.

Division 2 — Customers' Money and Other Assets

Application of this Division

- 22.** This Division shall apply to every approved clearing house —
- (a) with or to which money or assets are deposited or paid by its members in respect of or in relation to the contracts of the customers of those members; and
 - (b) which holds such money or assets in the course of its clearing or settlement activities.

Segregation of customers' money held by approved clearing house

23.—(1) For the purposes of section 60(1)(a) of the Act, an approved clearing house which accepts any money or assets deposited with or paid to it by its members, for or in relation to any contracts of the customers of those members, shall, in respect of each contract which is cleared or settled by it, and for or in relation to which any money or assets are deposited with or paid to it by a member, require the member to notify it in such manner as it may determine —

- (a) whether that contract is a contract of a customer of the member;
- (b) whether the money or assets deposited or paid for or in relation to that contract are deposited or paid for or in relation to a contract of a customer of the member; and
- (c) if that contract is a specified transaction of a customer of the member, whether the books for the money or assets that are deposited or paid for or in relation to that contract are, in accordance with the instructions given to the member by that customer, to be separated from the books for any money or assets deposited with or paid to the approved clearing house for or in relation to the contracts of other customers of the member.

(2) Where a member of an approved clearing house has notified the approved clearing house under paragraph (1) that any money (referred to in this paragraph as the relevant money) or assets (referred to in this paragraph as the relevant assets) are deposited or paid for or in relation

to a contract which is a specified transaction of a customer of the member, and that the books for the relevant money or relevant assets are to be separated from the books for any money or assets deposited or paid for or in relation to the contracts of other customers of the member, the approved clearing house shall —

- (a) subject to regulations 24 and 25, ensure that the relevant money is deposited in a trust account, or the relevant assets are deposited in a custody account, to be held for the benefit of the customers of the member;
- (b) ensure that the relevant money or relevant assets are kept separate from all other money and assets received by the approved clearing house which are deposited or paid for or in relation to the contracts of the members of the approved clearing house;
- (c) ensure that the relevant money or relevant assets are kept separate from the money and assets of the approved clearing house; and
- (d) keep the books for the relevant money or relevant assets separate from the books for the money or assets deposited or paid for or in relation to the contracts of any other customer of any member of the approved clearing house.

(3) Where any money (referred to in this paragraph as the relevant money) or assets (referred to in this paragraph as the relevant assets) are deposited or paid for or in relation to a contract of a customer of a member of an approved clearing house, and the books for the relevant money or relevant assets are not required to be separated from the books for the money or assets deposited or paid for or in relation to the contracts of other customers of the member, the approved clearing house shall —

- (a) subject to regulations 24 and 25, ensure that the relevant money is deposited in a trust account, or the relevant assets are deposited in a custody account, to be held for the benefit of the customers of the member;
- (b) ensure that the relevant money or relevant assets are kept separate from all other money and assets received by the

approved clearing house which are deposited or paid for or in relation to the contracts of the members of the approved clearing house;

- (c) ensure that the relevant money or relevant assets are kept separate from the money and assets of the approved clearing house; and
- (d) keep the books for the money or assets deposited or paid for or in relation to the contracts of the customers of the member separate from the books for the money or assets deposited or paid for or in relation to the contracts of the customers of any other member of the approved clearing house.

(4) Notwithstanding paragraphs (2)(a) and (3)(a), where a member of an approved clearing house has notified the approved clearing house under paragraph (1) that any money (referred to in this paragraph as the relevant money) or assets (referred to in this paragraph as the relevant assets) are deposited or paid for or in relation to a contract of a customer of the member, and the member is a bank used by the approved clearing house for the purpose of depositing money or assets, the approved clearing house shall ensure that the relevant money is deposited, or the relevant assets are deposited, in an account which is not operated by the member in its role as a bank or custodian, as the case may be.

(5) Nothing in paragraphs (2)(a) and (3)(a) shall prevent an approved clearing house from commingling all money or assets deposited pursuant to paragraphs (2)(a) and (3)(a) in the same trust account or custody account, as the case may be.

(6) Where an approved clearing house has been convicted of an offence under regulation 52 of contravening paragraph (2)(a) or (b) or (3)(a) or (b), in so far as any money which has been deposited in a trust account referred to in paragraph (2)(a) or (3)(a), or any asset which has been deposited in a custody account referred to in paragraph (2)(a) or (3)(a), is used for any purpose other than —

- (a) for or in relation to a contract of a customer of a member of the approved clearing house; or

(b) in accordance with regulations 24 and 25,
the approved clearing house shall —

- (i) if the contravention involved any money, repay the money to the trust account; or
- (ii) if the contravention involved any asset —
 - (A) return the asset to the custody account; or
 - (B) if the asset cannot be returned to the custody account, deposit in the trust account, for the benefit of the customers of the member, an amount of money equivalent to the monetary value of the asset at the time of the contravention.

(7) In this regulation, “bank” has the same meaning as in section 2(1) of the Banking Act (Cap. 19).

Permissible use of customers’ money and assets by approved clearing house

24.—(1) For the purposes of section 60(1)(b) of the Act, where the books for the money or assets deposited or paid for or in relation to the contracts of the customers of a member of an approved clearing house are kept by the approved clearing house in accordance with regulation 23(3), and the member fails to meet its obligations to the approved clearing house that arise from the contracts of those customers (referred to in this paragraph as the subject obligations), the approved clearing house may use the money or assets held by the approved clearing house in accordance with regulation 23(3) to meet the subject obligations, only if —

- (a) the approved clearing house is of the opinion, formed in good faith, that the failure of the member to meet the subject obligations is directly attributable to the failure of any such customer of the member to meet that customer’s obligations under any market contract;
- (b) either —
 - (i) both of the following have been wholly utilised to meet the subject obligations:

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- (A) the money and assets deposited with or paid to the approved clearing house for or in relation to the contracts of the member itself;
 - (B) the money and assets (not being any money or assets of any customer of the member) deposited by the member with the approved clearing house as collateral or guarantee for the purpose of satisfying all obligations of the member to the approved clearing house; or
- (ii) the approved clearing house has reasonable grounds for forming an opinion that the failure to use the customers' money or assets to meet the subject obligations may jeopardise the financial integrity of the approved clearing house;
- (c) the approved clearing house has made provision in its business rules for requirements in addition to those referred to in sub-paragraphs (a) and (b);
 - (d) the additional requirements referred to in sub-paragraph (c) are not inconsistent with the requirements in sub-paragraphs (a) and (b); and
 - (e) the money or assets are used in accordance with the provisions of the business rules referred to in sub-paragraph (c).

(2) Where the books for the money or assets deposited or paid for or in relation to the contracts of a customer of a member of an approved clearing house are kept by the approved clearing house in accordance with regulation 23(2), and the member fails to meet its obligations to the approved clearing house that arise from those contracts (referred to in this paragraph as the subject obligations), the approved clearing house shall not use any money or assets deposited with or paid to the approved clearing house for or in relation to the contracts of any other customer of the member (including any such money or assets held by the approved clearing house in accordance with regulation 23(2) or (3)) to meet the subject obligations.

(3) For the avoidance of doubt, where any money or assets deposited or paid for or in relation to a contract of a customer of a member of an approved clearing house are held by the approved clearing house in accordance with regulation 23(2), the approved clearing house is not prevented from using the money or assets if —

- (a) the member fails to meet its obligations to the approved clearing house; and
- (b) the failure of the member to meet its obligations to the approved clearing house is directly attributable to the failure of that customer to meet its obligations under any market contract.

(4) An approved clearing house shall notify the Authority before using any customer's money or assets in the circumstances specified in paragraph (1) or (3).

Permissible investment of customers' money by approved clearing house

25.—(1) For the purposes of section 60(1)(c) of the Act, an approved clearing house may invest any money or assets deposited or paid for or in relation to the contracts of a customer of a member of the approved clearing house and held by the approved clearing house in the course of its clearing or settlement activities, including any money or assets deposited in a custody account referred to in regulation 23(2)(a) or (3)(a), in the following classes of securities:

- (a) securities of the Government;
- (b) if the money deposited with or paid to the approved clearing house is in the currency of a foreign country or territory, debt securities of the government of that country or territory;
- (c) negotiable certificates of deposit;
- (d) money market funds.

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

(3) When seeking the approval of the Authority under paragraph (2), the approved clearing house shall satisfy the Authority —

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

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

Daily computation of customers' money and assets

26.—(1) An approved clearing house shall, at such intervals as the approved clearing house determines appropriate (but no less frequently than once each business day), compute —

- (a) for the purposes of regulation 23(3), the total amount of money and assets of the customers of the members of the approved clearing house held by the approved clearing house, including money that has been invested by the approved clearing house under regulation 25(1); and
- (b) for the purposes of regulation 23(2), the amount of money and assets of each customer of a member of the approved clearing house held by the approved clearing house, including money that has been invested by the approved clearing house under regulation 25(1).

(2) An approved clearing house shall complete any computation under paragraph (1) in respect of each business day no later than noon of the next business day, and shall keep that computation together with all supporting data.

(3) In this regulation, “business day” means any day in which the approved clearing house is open for business.

Verification of money and assets placed with approved clearing house

27.—(1) An approved clearing house shall, in respect of each financial year of the approved clearing house, cause its auditors to submit to the Authority —

- (a) a report covering the first 6 months of the financial year, before the end of the seventh month of the financial year (or at such other time as the Authority may require); and
- (b) a report covering the last 6 months of the financial year, before the end of the first month of the next financial year (or at such other time as the Authority may require).

(2) The approved clearing house shall ensure that each report referred to in paragraph (1) does, in respect of the period covered by the report —

- (a) certify whether the money and assets deposited with or paid to the approved clearing house by a member of the approved clearing house under regulation 23(3), for or in relation to a contract of a customer of the member —
 - (i) are segregated from any other money and assets deposited by the member with the approved clearing house;
 - (ii) are deposited in a trust account or custody account in accordance with regulation 23(3)(b), and are not commingled with the money and assets of the approved clearing house; and
 - (iii) are used only as permitted under or in accordance with regulation 24 or 25; and
- (b) certify whether the money and assets deposited with or paid to the approved clearing house by a member of the approved clearing house under regulation 23(2), for or in relation to a contract of a customer of the member —

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- (i) are recorded in books separate from the books for the money or assets deposited or paid for or in relation to the contracts of other customers of the member;
 - (ii) are segregated from any other money and assets deposited by the member with the approved clearing house;
 - (iii) are deposited in a trust account or custody account in accordance with regulation 23(2)(b), and are not commingled with the money and assets of the approved clearing house; and
 - (iv) are used only as permitted under or in accordance with regulation 24 or 25; and
- (c) set out the amount, on an aggregated basis, of all money and assets deposited by the member with the approved clearing house —
- (i) for or in relation to each contract of a customer of the member; and
 - (ii) for or in relation to any other contract.

Reconciliation of money and assets placed with approved clearing house

28.—(1) Where a member of an approved clearing house has notified the approved clearing house that the books for any money or assets deposited or paid for or in relation to a contract of a customer (referred to in this paragraph as the relevant customer) of the member are to be separated from the books for any money or assets deposited or paid for or in relation to the contracts of other customers of the member, the approved clearing house shall cause the member to submit to the approved clearing house on a quarterly basis (or at such other time as the approved clearing house may require) records setting out the amount of money and assets deposited with or paid to the approved clearing house for or in relation to the contracts of the relevant customer.

(2) An approved clearing house shall ensure that the records it keeps in respect of the money or assets deposited or paid for or in relation to

any contract or contracts of a customer of a member of the approved clearing house are subject to controls adequate to maintain the accuracy of such records, including regular reconciliation of such records with the records submitted by the member in accordance with paragraph (1).

Division 3 — Business Rules of Approved Clearing Houses

Content of business rules of approved clearing house

29. For the purposes of section 66(1)(a) of the Act, an approved clearing house shall make provision in its business rules, to the satisfaction of the Authority, for —

- (a) the criteria that the approved clearing house would use to determine whether a person should or should not be admitted as a member of the approved clearing house;
- (b) the continuing requirements to be satisfied by each member of the approved clearing house, including —
 - (i) requirements relating to the proper conduct of the member when participating in any clearing facility operated by the approved clearing house;
 - (ii) a requirement that the member has sufficient financial resources to reasonably fulfil all its financial obligations arising out of its activities in relation to any clearing facility operated by the approved clearing house;
 - (iii) requirements that facilitate the monitoring by the approved clearing house of the compliance of the member with the business rules of the approved clearing house; and
 - (iv) requirements providing for the expulsion, suspension or disciplining of the member for a contravention of the business rules of the approved clearing house;
- (c) the class or classes of transactions that may be cleared or settled on any clearing facility that the approved clearing house operates;

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- (d) the terms and conditions under which transactions will be cleared or settled on any clearing facility that the approved clearing house operates;
 - (e) matters relating to risks in the operation of any clearing facility that the approved clearing house operates;
 - (f) the handling of defaults, including —
 - (i) the financial resources available to support the default of a member of the approved clearing house; and
 - (ii) where a member of the approved clearing house has failed, or appears to be unable, or is likely to become unable, to meet the member's obligations for all unsettled or open market contracts to which the member is a party, the taking of proceedings or any other action against the member; and
 - (g) the carrying on of business of the approved clearing house with due regard to the interests and protection of the investing public.

Amendment of business rules

30.—(1) For the purposes of section 66(2) of the Act and subject to paragraph (7), an approved clearing house which proposes to amend its business rules shall, prior to making the amendment, notify the Authority of —

- (a) the proposed amendment;
- (b) the purpose of the proposed amendment; and
- (c) the date on which the approved clearing house proposes that the amendment be brought into force.

(2) The approved clearing house shall, prior to notifying the Authority of the matters referred to in paragraph (1)(a), (b) and (c), consult the participants of the approved clearing house on the proposed amendment, unless the proposed amendment would have limited impact on those participants.

(3) Subject to paragraphs (4) and (6), the date referred to in paragraph (1)(c) shall be at least 21 days after the date on which the Authority receives the notification referred to in paragraph (1).

(4) The Authority may, on its own initiative or on the application of the approved clearing house, by notice in writing to the approved clearing house, allow an amendment under paragraph (1) to come into force less than 21 days after the date on which the Authority receives the notification referred to in paragraph (1).

(5) Subject to paragraph (6), the Authority may, within 21 days after receiving the notification referred to in paragraph (1), by notice in writing to the approved clearing house, disallow, alter or supplement the whole or any part of a proposed amendment under paragraph (1), and, thereupon, such whole or part of the proposed 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, on such date as the Authority may specify in the notice in writing, as altered or supplemented.

(6) The Authority may, on its own initiative, by notice in writing to the approved clearing house, vary the period specified in paragraph (5), and where that period is extended, the amendment under paragraph (1) or the altered or supplemented agreement under paragraph (5), as the case may be, shall not come into force before the expiry of the extended period.

(7) This regulation shall not apply to any periodic amendment made by an approved clearing house to the initial margin requirement or maintenance margin requirement of a contract which the approved clearing house imposes on its participants, if that amendment is made in response to a change in the historical or anticipated volatility of any contract, or in the co-relation between contracts.

Division 4 — Matters requiring Approval of Authority

Application and criteria for approval to acquire substantial shareholding

31.—(1) Any person applying for approval under section 70(1) or (2) of the Act shall submit to the Authority a written application that sets out —

- (a) the name of the applicant;
- (b) where the applicant is a corporation —
 - (i) its place of incorporation;
 - (ii) its substantial shareholders;
 - (iii) its directors and chief executive officer; and
 - (iv) its principal business;
- (c) where the applicant is an individual —
 - (i) his nationality;
 - (ii) his principal occupation; and
 - (iii) his directorships;
- (d) all the corporations in which the applicant has a substantial shareholding;
- (e) the percentage of shareholding and voting power that the applicant has in the approved clearing house;
- (f) the percentage of shareholding and voting power that the applicant is seeking to have in the approved clearing house;
- (g) the reasons for making the application;
- (h) the mode and structure, as appropriate, under which the increase in shareholding would be carried out;
- (i) whether the applicant will seek representation on the board of directors of the approved clearing house; and
- (j) any other information that may facilitate the determination of the Authority as to whether the applicant is a fit and proper person for the purposes of paragraph (3)(a).

(2) Where an application under paragraph (1) has been made, the Authority may require the applicant to furnish the Authority with such information or documents as the Authority considers necessary in relation to the application, and the applicant shall comply with that requirement.

(3) The Authority may grant its approval under section 70(1) or (2) of the Act if the Authority is satisfied that —

- (a) the applicant is a fit and proper person to be a substantial shareholder, 12% controller or 20% controller (as the case may be) of the approved clearing house;
- (b) having regard to the applicant's likely influence, the approved clearing house will, or will continue to, conduct its business prudently and in compliance with the provisions of the Act; and
- (c) it would not be contrary to the interests of the public to do so.

(4) In paragraph (3), “12% controller” and “20% controller” have the same meanings as in section 70(3) of the Act.

Application for approval of chairman, chief executive officer, director and key persons

32.—(1) For the purposes of section 71(3) of the Act, an approved clearing house may apply for approval under section 71(1) or (2) of the Act by submitting Form 6 to the Authority.

(2) Where an approved clearing house has made an application under paragraph (1), the Authority may require the approved clearing house to furnish the Authority with such information or documents as the Authority considers necessary in relation to the application, and the approved clearing house shall comply with that requirement.

Criteria for approval of chairman, chief executive officer, director and key persons

33. For the purposes of section 71(4) of the Act, the Authority may have regard to the following matters in determining whether to

approve or refuse to approve the appointment of a person under section 71(1) or (2) of the Act:

- (a) whether the person is fit and proper to be so appointed;
- (b) whether the appointment of the person would be consistent with any applicable written law relating to —
 - (i) the qualifications for the position; or
 - (ii) the requirements for the composition of the board of directors or any committee of the approved clearing house;
- (c) whether it would be contrary to the interests of the public to approve the appointment of the person.

PART IV

REGULATION OF RECOGNISED CLEARING HOUSES

Division 1 — Obligations and Matters relating to Recognised Clearing Houses

Obligation to notify Authority of certain matters

34.—(1) For the purposes of section 76(1)(c)(i) of the Act, a recognised clearing house shall, as soon as practicable after the occurrence of any of the following circumstances, give the Authority notice of such circumstance:

- (a) any civil or criminal legal proceeding instituted against the recognised clearing house, whether in Singapore or elsewhere, which may have a material impact on the operations or finances of the recognised clearing house;
- (b) any disciplinary action taken against the recognised clearing house by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;
- (c) any material change to the regulatory requirements imposed on the recognised clearing house by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;

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- (d) any admission or cessation of a bank to act as a settlement bank for the recognised clearing house;
 - (e) any failure by any party to debit or credit the relevant accounts for the purposes of the settlement of transactions, including the settlement of money, securities or physically delivered futures contracts or derivatives contracts;
 - (f) the recognised clearing house becoming aware of any acquisition or disposal by any person of a substantial shareholding in the recognised clearing house.

(2) A recognised clearing house shall, if it intends to make a declaration that a member of the recognised clearing house has defaulted or to commence default proceedings against any member of the recognised clearing house —

- (a) immediately give the Authority notice of such intent; or
- (b) where the recognised clearing house is prohibited by the laws of confidence in the territory in which the head office or principal place of business of the recognised clearing house is situated, give the Authority notice of such intent as soon as the recognised clearing house is permitted to do so.

Obligation of members with respect to money or assets received from customers

35. A recognised clearing house shall ensure that every member thereof which accepts from that member's customers any money or assets deposited or paid for or in relation to a contract in a specified transaction shall inform each customer concerned that the customer can choose to have the books for any money or assets deposited or paid for or in relation to the contracts of the customer separated from the books for money or assets deposited or paid for or in relation to the contracts of any other customer or customers of that member.

Obligation to submit periodic reports

36. For the purposes of section 79 of the Act, a recognised clearing house shall submit to the Authority —

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- (a) within 3 months after the end of the financial year of the recognised clearing house or such longer period as the Authority may permit, a copy of the annual report of the recognised clearing house;
 - (b) when required by the Authority, a report relating to the business of the recognised clearing house; and
 - (c) when required by the Authority, such other report as the Authority may require for the proper administration of the Act.

Exceptions to obligation to maintain confidentiality

37.—(1) For the purposes of section 81(2)(a) of the Act, section 81(1) of the Act shall not apply to the disclosure of user information by a recognised clearing house or its officers or employees for the following purposes or in the following circumstances:

- (a) the disclosure of user information is necessary for the making of a complaint or report under any written law for an offence alleged or suspected to have been committed under such written law;
- (b) the disclosure of user information is permitted for such purpose specified in writing by the user or, where the user is deceased, by his appointed personal representative;
- (c) the disclosure of user information is necessary for the execution by the recognised clearing house of a transaction in any securities, futures contracts or derivatives contracts or for the clearing or settlement of any such transaction, and such disclosure is made only to another user which is —
 - (i) a party to the transaction; or
 - (ii) a member of an approved exchange, an approved clearing house or a recognised clearing house through which that transaction is executed, cleared or settled;
- (d) where there are any disciplinary proceedings of the recognised clearing house —

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- (i) the disclosure of the user information is necessary in those disciplinary proceedings, and reasonable steps are taken to ensure that user information disclosed to any third person is used strictly for the purpose for which the user information is disclosed; or
 - (ii) the disclosure of the user information is necessary for the publication, in any form or manner, of those disciplinary proceedings and the outcome thereof;
 - (e) the user information disclosed is already in the public domain;
 - (f) the disclosure of user information is made in connection with an arrangement for protection against a default by a member of the recognised clearing house to another member of the recognised clearing house who is identified by the recognised clearing house for the purposes of carrying out or undertaking the obligations under the arrangement;
 - (g) the disclosure of user information is made to a member of the recognised clearing house in connection with an arrangement for the transfer to that member of any contract from another member of the recognised clearing house who is in default;
 - (h) the disclosure of user information is made in connection with —
 - (i) the outsourcing or proposed outsourcing of any function of the recognised clearing house to a third party;
 - (ii) the engagement or potential engagement of a third party by the recognised clearing house to create, install or maintain systems of the recognised clearing house; or
 - (iii) the appointment or engagement of an auditor, a lawyer, a consultant or any other professional by the recognised clearing house under a contract for service;

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- (i) the disclosure of user information is necessary for, or is required by the Public Trustee or the Commissioner of Estate Duties in the course of —
 - (i) an application for a grant of probate or letters of administration or the resealing thereof in relation to the estate of a deceased user; or
 - (ii) the administration of the estate of a deceased user; or
 - (j) the disclosure of user information is made in connection with —
 - (i) the bankruptcy of a user who is an individual; or
 - (ii) the winding up or receivership of a user which is a body corporate.
- (2) Where user information is disclosed under paragraph (1)(f), (g) or (h), the recognised clearing house shall —
- (a) maintain, and make available for inspection by the Authority, a record of —
 - (i) the circumstances relating to the disclosure of the user information; and
 - (ii) the particulars of —
 - (A) in the case of a disclosure of user information under paragraph (1)(f), the arrangement for protection;
 - (B) in the case of a disclosure of user information under paragraph (1)(g), the arrangement for the transfer;
 - (C) in the case of a disclosure of user information under paragraph (1)(h)(i), the outsourcing or proposed outsourcing of the function of the recognised clearing house;
 - (D) in the case of a disclosure of user information under paragraph (1)(h)(ii), the engagement or potential engagement of the third party; or

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- (E) in the case of a disclosure of user information under paragraph (1)(h)(iii), the appointment or engagement of the auditor, lawyer, consultant or other professional;
- (b) disclose the user information only in so far as this is necessary for the relevant purpose; and
- (c) take reasonable steps to ensure that —
- (i) the user information disclosed is used by the person to whom the disclosure is made strictly for the relevant purpose; and
 - (ii) the user information is not disclosed by that person to any other person, except with the consent of the recognised clearing house.
- (3) Where the disclosure to a body corporate of user information is permitted for any purpose or in any circumstance under paragraph (1), the user information may be disclosed only to those officers of the body corporate to whom the disclosure is necessary for the relevant purpose.
- (4) In paragraphs (2) and (3), “relevant purpose” means —
- (a) in the case of a disclosure of user information under paragraph (1)(f), the carrying out of the arrangement for protection;
 - (b) in the case of a disclosure of user information under paragraph (1)(g), the carrying out of the arrangement for the transfer;
 - (c) in the case of a disclosure of user information under paragraph (1)(h)(i), facilitating the outsourcing or proposed outsourcing of the function of the recognised clearing house;
 - (d) in the case of a disclosure of user information under paragraph (1)(h)(ii), facilitating the engagement or potential engagement of the third party; and
 - (e) in the case of a disclosure of user information under paragraph (1)(h)(iii), facilitating the appointment or

engagement of the auditor, lawyer, consultant or other professional.

Business continuity plan

38.—(1) A recognised clearing house shall maintain at all times a plan of action (referred to in this regulation as a business continuity plan) setting out the procedures and establishing the systems necessary to restore, in the event of any disruption to the processes of any clearing facility which it operates, safe and efficient operations of that clearing facility.

(2) A recognised clearing house shall review and test the procedures and systems referred to in paragraph (1) on such regular basis as may be specified in the business continuity plan.

Provision of information

39. A recognised clearing house shall make available to any person upon his request, or publish in a manner that is accessible, information on —

- (a) all services of the recognised clearing house;
- (b) all products that may be cleared or settled by the recognised clearing house; and
- (c) the applicable fees and charges of the recognised clearing house.

Transmission and storage of user information

40.—(1) A recognised clearing house shall take all reasonable measures to maintain the integrity and security of the transmission and storage of its user information.

(2) A recognised clearing house shall immediately notify the Authority of —

- (a) any compromise of the integrity or security of the transmission or storage of any user information of the recognised clearing house; and

- (b) any action taken or intended to be taken to restore the integrity and security of the transmission and storage of that user information.

Supervision of participants

41. A recognised clearing house shall —

- (a) take immediate action to terminate, suspend or restrict the access of a participant in Singapore to any clearing facility operated by the recognised clearing house —
- (i) where the participant is an entity licensed or authorised by the Authority, if the participant's licence or authorisation is revoked by the Authority; or
- (ii) upon the direction of the Authority; and
- (b) within 14 days, or such longer period as the Authority may permit, after taking any disciplinary action against a participant in Singapore, notify the Authority of that disciplinary action.

Regulation of clearing fees of specified recognised clearing houses

42.—(1) A recognised clearing house specified in Part I of the Third Schedule shall not, without the prior approval of the Authority under paragraph (4) —

- (a) impose any clearing fee on its participants in respect of any service or services provided by the recognised clearing house; or
- (b) modify, restructure or otherwise change any existing clearing fee imposed on its participants.

(2) An application to the Authority for approval under paragraph (4) shall be made in Form 5.

(3) Where a recognised clearing house has made an application under paragraph (2), the Authority may require the recognised clearing house to furnish the Authority with such information or

documents as the Authority considers necessary in relation to the application, and the recognised clearing house shall comply with that requirement.

(4) The Authority shall, within 20 business days after receiving a completed application under paragraph (2), by notice in writing to the recognised clearing house, either grant the approval or notify the recognised clearing house of the Authority's intention to refuse to grant the approval.

(5) The Authority may, by notice in writing to the recognised clearing house, extend the period referred to in paragraph (4) —

- (a) in the first instance, to a period of up to 35 business days after receiving the completed application under paragraph (2); or
- (b) upon the expiry of the period referred to in sub-paragraph (a), for such further period as the Authority thinks fit.

(6) Before the Authority extends under paragraph (5)(b) the period referred to in paragraph (4), the Authority shall give the recognised clearing house an opportunity to be heard.

(7) In deciding whether to grant or refuse approval under paragraph (4), the Authority may have regard to the following matters:

- (a) the effect of the proposed imposition of or change in the clearing fee on —
 - (i) competition in the financial services industry of Singapore; and
 - (ii) access to clearing or settlement services in Singapore;
- (b) the cost of providing the service to which the proposed imposition or change applies;
- (c) the effect of the proposed imposition or change on the cost and efficiency of trading, clearing and settlement in Singapore of the securities, futures contracts or derivatives contracts specified in Part II of the Third Schedule; and

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- (d) the effect of the proposed imposition or change on the objectives of the Authority as specified in section 4(1)(b) of the Monetary Authority of Singapore Act (Cap. 186).
- (8) The Authority may grant its approval under paragraph (4) subject to such conditions or restrictions as the Authority may think fit to impose by notice in writing to the recognised clearing house, including conditions or restrictions relating to —
- (a) the period for which the approval of a clearing fee will be in force;
 - (b) the circumstances under which, or date by which, upon the expiry of the period referred to in sub-paragraph (a), the recognised clearing house will be required to submit another application under paragraph (2) for approval of the clearing fee; and
 - (c) the circumstances under which, or the changes in the clearing fee for which, upon the expiry of the period referred to in sub-paragraph (a), the recognised clearing house will not be required to submit another application under paragraph (2) for approval of a change in the clearing fee.
- (9) The Authority shall not refuse to grant its approval under paragraph (4) without giving the recognised clearing house an opportunity to be heard.
- (10) A recognised clearing house may only charge a clearing fee approved by the Authority under paragraph (4) for the service or services in respect of which that fee was approved.
- (11) In this regulation, “clearing fee” means any fee, tariff or compensation for clearing or settlement of transactions in the securities, futures contracts or derivatives contracts specified in Part II of the Third Schedule.

Division 2 — Customers' Money and Other Assets

Application of this Division

- 43.** This Division shall apply to every recognised clearing house —
- (a) which is a Singapore corporation;
 - (b) with or to which money or assets are deposited or paid by its members in respect of or in relation to the contracts of the customers of those members; and
 - (c) which holds such money or assets in the course of its clearing or settlement activities.

Segregation of customers' money held by recognised clearing house

44.—(1) A recognised clearing house which accepts any money or assets deposited with or paid to it by its members, for or in relation to any contracts of the customers of those members, shall, in respect of each contract which is cleared or settled by it, and for or in relation to which any money or assets are deposited with or paid to it, require the member to notify it in such manner as it may determine —

- (a) whether that contract is a contract of a customer of the member;
- (b) whether the money or assets deposited or paid for or in relation to that contract are deposited or paid for or in relation to a contract of a customer of the member; and
- (c) if that contract is a specified transaction of a customer of the member, whether the books for the money or assets that are deposited or paid for or in relation to that contract are, in accordance with the instructions given to the member by that customer, to be separated from the books for any money or assets deposited with or paid to the recognised clearing house for or in relation to the contracts of other customers of the member.

(2) Where a member of a recognised clearing house has notified the recognised clearing houses under paragraph (1) that any money (referred to in this paragraph as the relevant money) or assets (referred

to in this paragraph as the relevant assets) are deposited or paid for or in relation to a contract which is a specified transaction of a customer of the member, and that the books for the relevant money or relevant assets are to be separated from the books for any money or assets deposited or paid for or in relation to the contracts of other customers of the member, the recognised clearing house shall —

- (a) subject to regulations 45 and 46, ensure that the relevant money is deposited in a trust account, or the relevant assets are deposited in a custody account, to be held for the benefit of the customers of the member;
- (b) ensure that the relevant money or relevant assets are kept separate from all other money and assets received by the recognised clearing house which are deposited or paid for or in relation to the contracts of the members of the recognised clearing house;
- (c) ensure that the relevant money or relevant assets are kept separate from the money and assets of the recognised clearing house; and
- (d) keep the books for the relevant money or relevant assets separate from the books for the money or assets deposited or paid for or in relation to the contracts of any other customer of any member of the recognised clearing house.

(3) Where any money (referred to in this paragraph as the relevant money) or assets (referred to in this paragraph as the relevant assets) are deposited or paid for or in relation to a contract of a customer of a member of a recognised clearing house, and the books for the relevant money or relevant assets are not required to be separated from the books for the money or assets deposited or paid for or in relation to the contracts of other customers of the member, the recognised clearing house shall —

- (a) subject to regulations 45 and 46, ensure that the relevant money is deposited in a trust account, or the relevant assets are deposited in a custody account, to be held for the benefit of the customers of the member;

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- (b) ensure that the relevant money or relevant assets are kept separate from all other money and assets received by the recognised clearing house which are deposited or paid for or in relation to the contracts of the members of the recognised clearing house;
 - (c) ensure that the relevant money or relevant assets are kept separate from the money and assets of the recognised clearing house; and
 - (d) keep the books for the money or assets deposited or paid for or in relation to the contracts of the customers of the member separate from the books for the money or assets deposited or paid for or in relation to the contracts of the customers of any other member of the recognised clearing house.

(4) Notwithstanding paragraphs (2)(a) and (3)(a), where a member of a recognised clearing house has notified the recognised clearing house under paragraph (1) that any money (referred to in this paragraph as the relevant money) or assets (referred to in this paragraph as the relevant assets) are deposited or paid for or in relation to a contract of a customer of the member, and the member is a bank used by the recognised clearing house for the purpose of depositing money or assets, the recognised clearing house shall ensure that the relevant money is deposited, or the relevant assets are deposited, in an account which is not operated by the member in its role as a bank or custodian, as the case may be.

(5) Nothing in paragraphs (2)(a) and (3)(a) shall prevent a recognised clearing house from commingling all money or assets deposited pursuant to paragraphs (2)(a) and (3)(a) in the same trust account or custody account, as the case may be.

(6) Where a recognised clearing house has been convicted of an offence under regulation 52 of contravening paragraph (2)(a) or (b) or (3)(a) or (b), in so far as any money which has been deposited in a trust account referred to in paragraph (2)(a) or (3)(a), or any asset which has been deposited in a custody account referred to in paragraph (2)(a) or (3)(a), is used for any purpose other than —

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- (a) for or in relation to a contract of a customer of a member of the recognised clearing house; or
- (b) in accordance with regulations 45 and 46,
- the recognised clearing house shall —
- (i) if the contravention involved any money, repay the money to the trust account; or
- (ii) if the contravention involved any asset —
- (A) return the asset to the custody account; or
- (B) if the asset cannot be returned to the custody account, deposit in the trust account, for the benefit of the customers of the member, an amount of money equivalent to the monetary value of the asset at the time of the contravention.

(7) In this regulation, “bank” has the same meaning as in section 2(1) of the Banking Act (Cap. 19).

Permissible use of customers’ money and assets by recognised clearing house

45.—(1) Where the books for the money or assets deposited or paid for or in relation to the contracts of the customers of a member of a recognised clearing house are kept by the recognised clearing house in accordance with regulation 44(3), and the member fails to meet its obligations to the recognised clearing house that arise from the contracts of those customers (referred to in this paragraph as the subject obligations), the recognised clearing house may use the money or assets held by the recognised clearing house in accordance with regulation 44(3) to meet the subject obligations, only if —

- (a) the recognised clearing house is of the opinion, formed in good faith, that the failure of the member to meet the subject obligations is directly attributable to the failure of any such customer of the member to meet that customer’s obligations under any market contract;

(b) either —

- (i) both of the following have been wholly utilised to meet the subject obligations:
 - (A) the money and assets deposited with or paid to the recognised clearing house for or in relation to the contracts of the member itself;
 - (B) the money and assets (not being any money or assets of any customer of the member) deposited by the member with the recognised clearing house as collateral or guarantee for the purpose of satisfying all obligations of the member to the recognised clearing house; or
 - (ii) the recognised clearing house has reasonable grounds for forming an opinion that the failure to use the customers' money or assets to meet the subject obligations may jeopardise the financial integrity of the recognised clearing house;
- (c) the recognised clearing house has made provision in its business rules for requirements in addition to those referred to in sub-paragraphs (a) and (b);
- (d) the additional requirements referred to in sub-paragraph (c) are not inconsistent with the requirements in sub-paragraphs (a) and (b); and
- (e) the money or assets are used in accordance with the provisions of the business rules referred to in sub-paragraph (c).

(2) Where the books for the money or assets deposited or paid for or in relation to the contracts of a customer of a member of a recognised clearing house are kept by the recognised clearing house in accordance with regulation 44(2), and the member fails to meet its obligations to the recognised clearing house that arise from those contracts (referred to in this paragraph as the subject obligations), the recognised clearing house shall not use any money or assets deposited with or paid to the recognised clearing house for or in relation to the contracts of any other customer of the member (including any such

money or assets held by the recognised clearing house in accordance with regulation 44(2) or (3)) to meet the subject obligations.

(3) For the avoidance of doubt, where any money or assets deposited or paid for or in relation to a contract of a customer of a member of a recognised clearing house are held by the recognised clearing house in accordance with regulation 44(2), the recognised clearing house is not prevented from using the money or assets if —

- (a) the member fails to meet its obligations to the recognised clearing house; and
- (b) the failure of the member to meet its obligations to the recognised clearing house is directly attributable to the failure of that customer to meet its obligations under any market contract.

(4) A recognised clearing house shall notify the Authority before using any customer's money or assets in the circumstances specified in paragraph (1) or (3).

Permissible investment of customers' money by recognised clearing house

46.—(1) A recognised clearing house may invest any money or assets deposited or paid for or in relation to the contracts of a customer of a member of the recognised clearing house and held by the recognised clearing house in the course of its clearing or settlement activities, including any money deposited in a custody account referred to in regulation 44(2)(a) or (3)(a), in the following classes of securities:

- (a) securities of the Government;
- (b) if the money deposited with or paid to the recognised clearing house is in the currency of a foreign country or territory, debt securities of the government of that country or territory;
- (c) negotiable certificates of deposit;
- (d) money market funds.

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

(3) When seeking the approval of the Authority under paragraph (2), the recognised clearing house shall satisfy the Authority —

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

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

Daily computation of customers' money and assets

47.—(1) A recognised clearing house shall, at such intervals as the recognised clearing house determines appropriate (but no less frequently than once each business day), compute —

- (a) for the purposes of regulation 44(3), the total amount of money and assets of the customers of the members of the recognised clearing house held by the recognised clearing house, including money that has been invested by the recognised clearing house under regulation 46(1); and
- (b) for the purposes of regulation 44(2), the amount of money and assets of each customer of a member of the recognised clearing house held by the recognised clearing house, including money that has been invested by the recognised clearing house under regulation 44(1).

(2) A recognised clearing house shall complete any computation under paragraph (1) in respect of each business day no later than noon

of the next business day, and shall keep that computation together with all supporting data.

(3) In this regulation, “business day” means any day in which the recognised clearing house is open for business.

Verification of money and assets placed with recognised clearing house

48.—(1) A recognised clearing house shall, in respect of each financial year of the recognised clearing house, cause its auditors to submit to the Authority —

- (a) a report covering the first 6 months of the financial year, before the end of the seventh month of the financial year (or at such other time as the Authority may require); and
- (b) a report covering the last 6 months of the financial year, before the end of the first month of the next financial year (or at such other time as the Authority may require).

(2) The recognised clearing house shall ensure that each report referred to in paragraph (1) does, in respect of the period covered by the report —

- (a) certify whether the money and assets deposited with or paid to the recognised clearing house by a member of the recognised clearing house under regulation 44(3), for or in relation to a contract of a customer of the member —
 - (i) are segregated from any other money and assets deposited by the member with the recognised clearing house;
 - (ii) are deposited in a trust account or custody account in accordance with regulation 44(3)(b), and are not commingled with the money and assets of the recognised clearing house; and
 - (iii) are used only as permitted under or in accordance with regulation 45 or 46; and
- (b) certify whether the money and assets deposited with or paid to the recognised clearing house by a member of the

recognised clearing house under regulation 44(2), for or in relation to a contract of a customer of the member —

- (i) are recorded in books separate from the books for the money or assets deposited or paid for or in relation to the contracts of other customers of the member;
 - (ii) are segregated from any other money and assets deposited by the member with the recognised clearing house;
 - (iii) are deposited in a trust account or custody account in accordance with regulation 44(2)(b), and are not commingled with the money and assets of the recognised clearing house; and
 - (iv) are used only as permitted under or in accordance with regulation 45 or 46; and
- (c) set out the amount, on an aggregated basis, of all money and assets deposited by the member with the recognised clearing house —
- (i) for or in relation to each contract of a customer of the member; and
 - (ii) for or in relation to any other contract.

Reconciliation of money and assets placed with recognised clearing house

49.—(1) Where a member of a recognised clearing house has notified the recognised clearing house that the books for any money or assets deposited or paid for or in relation to a contract of a customer (referred to in this paragraph as the relevant customer) of the member are to be separated from the books for any money or assets deposited or paid for or in relation to the contracts of other customers of the member, the recognised clearing house shall cause the member to submit to the recognised clearing house on a quarterly basis (or at such other time as the recognised clearing house may require) records setting out the amount of money and assets deposited with or paid to the recognised clearing house for or in relation to the contracts of the relevant customer.

(2) A recognised clearing house shall ensure that the records it keeps in respect of the money or assets deposited or paid for or in relation to any contract or contracts of a customer of a member of the recognised clearing house are subject to controls adequate to maintain the accuracy of such records, including regular reconciliation of such records with the records submitted by the member in accordance with paragraph (1).

PART V

INSOLVENCY

Application of Division 4 of Part III of Act

50. For the purposes of section 81B of the Act, Division 4 of Part III of the Act shall apply to the following transactions cleared or settled, whether by novation (however described) or otherwise, by an approved clearing house or a recognised clearing house:

- (a) securities;
- (b) futures contracts; and
- (c) derivatives contracts.

PART VI

MISCELLANEOUS

Criteria for determining whether officer failed to discharge duties or functions

51. For the purposes of section 81P(2) of the Act, the Authority may, in determining whether a chairman, chief executive officer or director of an approved clearing house or of a recognised clearing house (being a Singapore corporation), or any person referred to in section 71(2) of the Act who is appointed to any key management position or committee of an approved clearing house, has failed to discharge the duties or functions of his office or employment, have regard to whether that chairman, chief executive officer, director or person has taken reasonable steps to discharge the following duties:

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- (a) ensure the proper functioning of the approved clearing house or recognised clearing house (as the case may be);
 - (b) ensure the compliance of the approved clearing house or recognised clearing house (as the case may be) with all relevant legislation (including instruments, however described, having legislative effect) of any jurisdiction in which it is incorporated or in which it operates;
 - (c) set out and ensure compliance with written policies on all operational areas of the approved clearing house or recognised clearing house (as the case may be), including its financial policies, accounting and internal controls, internal auditing and compliance with all legislation (including instruments, however described, having legislative effect), whether of Singapore or of any other jurisdiction in which it is incorporated or in which it operates, and all business rules, governing its operations;
 - (d) identify, monitor and address the risks associated with the business activities of the approved clearing house or recognised clearing house (as the case may be);
 - (e) ensure that the business activities of the approved clearing house or recognised clearing house (as the case may be) are subject to adequate internal audit;
 - (f) oversee the financial undertakings and exposure (to risks of any nature) of the approved clearing house or recognised clearing house (as the case may be), by setting out proper delegation limits and risk management controls; and
 - (g) ensure —
 - (i) that the approved clearing house or recognised clearing house (as the case may be) maintains written records of the steps taken by it to monitor compliance with its policies, the limits on discretionary powers and its accounting and operating procedures; and
 - (ii) that every report, return or statement submitted by the approved clearing house or recognised clearing house

(as the case may be) to the Authority is complete and accurate.

Offences

52.—(1) Unless otherwise provided in these Regulations, any corporation which contravenes regulation 5, 11(2), 12(1) or (2), 15(2), 16, 17, 18, 19, 20(1) or (2), 21(1), (3) or (10), 23(2), (3) or (4), 24(4), 25(2), 26(1) or (2), 27, 28, 32(2), 37(2), 38, 39, 40, 41, 42(1), (3) or (10), 44(2), (3) or (4), 45(4), 46(2), 47(1) or (2), 48 or 49 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(2) Section 333(1) of the Act shall not apply to any offence referred to in paragraph (1).

Non-applicability of section 339(2) of Act

53. For the purposes of section 339(3) of the Act, section 339(2) of the Act shall not apply to a person operating a clearing facility outside of Singapore whose clearing facility (referred to in this regulation as the foreign clearing facility) is linked to a clearing facility in Singapore operated by an approved clearing house or a recognised clearing house (referred to in this regulation as the Singapore clearing facility), where —

- (a) the clearing systems of the linked clearing facilities are not significantly integrated;
- (b) the positions of members of the Singapore clearing facility or their customers held at the foreign clearing facility by virtue of the clearing linkage are not significant; and
- (c) that person —
 - (i) is willing and able to co-operate with the Authority by providing information and such other assistance to the Authority as may be required by the Authority for the performance of its functions and duties under the Act;

- (ii) has its head office in a jurisdiction where the Authority has entered into adequate arrangements for mutual co-operation with the financial services regulatory authority responsible for the supervision of that person;
- (iii) has its head office in a jurisdiction where the regulatory regime is comparable, in the degree to which the objectives specified in section 47 of the Act are achieved, to the requirements and supervision to which clearing facilities are subject under the Act; and
- (iv) has in place adequate arrangements with the approved clearing house or recognised clearing house operating the Singapore clearing facility for the supervision of corporations that clear or settle transactions on both linked clearing facilities.

Revocation

54. The Securities and Futures (Clearing Facilities) Regulations 2005 (G.N. No. S 366/2005) are revoked.

FIRST SCHEDULE

Regulation 3(1)

DESCRIPTION OF FORMS

<i>Form</i>	<i>Description of Form</i>
1	Application for approval as an approved clearing house or recognition as a recognised clearing house
2	Information on chief executive officer and directors
3	Information on shareholders and subsidiaries
4	Application for change in status
5	Application to impose or change clearing fee
6	Application for approval for appointment of chairman, chief executive officer, director or key person

SECOND SCHEDULE

Regulation 4(1)

FEEES

<i>First column</i>	<i>Second column</i>
1. For every application for approval as an approved clearing house, or recognition as a recognised clearing house, under section 50(1) or (2) of the Act	\$4,000
2. Annual fee under section 53(1) of the Act —	
(a) for every recognised clearing house	\$10,000
(b) The Central Depository (Pte) Limited	\$350,000
(c) Singapore Exchange Derivatives Clearing Limited	\$240,000
(d) ICE Clear Singapore Pte. Ltd. (formerly known as “Singapore Mercantile Exchange Clearing Corporation Pte Ltd”)	\$110,000
(e) Eurex Clearing Asia Pte. Ltd.	\$110,000
3. For every application by an approved clearing house or a recognised clearing house to change its status under section 54(1) of the Act	\$1,000
4. For every application for approval to acquire a substantial shareholding in, or to become a 12% controller or 20% controller of, an approved clearing house under section 70(1) or (2) of the Act	\$500

[S 425/2015 wef 08/07/2015]

[S 296/2014 wef 22/04/2014]

THIRD SCHEDULE

Regulations 21(1), (7) and (12) and
42(1), (7) and (11)

REGULATION OF CLEARING FEES

PART I

SPECIFIED APPROVED CLEARING HOUSES AND RECOGNISED CLEARING HOUSES

1. The Central Depository (Pte) Limited is an approved clearing house specified for the purposes of regulation 21(1).
2. There is no recognised clearing house specified for the purposes of regulation 42(1).

PART II

SPECIFIED SECURITIES, FUTURES CONTRACTS OR DERIVATIVES CONTRACTS

1. The securities, futures contracts or derivatives contracts specified for the purposes of regulation 21(7)(c) and (12) are all debentures, stocks or shares that —
 - (a) are issued or proposed to be issued by a corporation, body unincorporate or government; and
 - (b) are cleared or settled by The Central Depository (Pte) Limited.
2. There are no securities, futures contracts or derivatives contracts specified for the purposes of regulation 42(7)(c) and (11).

Made this 23rd day of July 2013.

RAVI MENON
Managing Director,
Monetary Authority of Singapore.

[CMD/MCP/02/2012; AG/LLRD/SL/289/2010/23 Vol. 1]