
First published in the *Government Gazette*, Electronic Edition, on 29th November 2005 at 5:00 pm.

No. S 742

**SECURITIES AND FUTURES ACT
(CHAPTER 289)**

**SECURITIES AND FUTURES (CORPORATE GOVERNANCE
OF APPROVED EXCHANGES, APPROVED CLEARING
HOUSES AND APPROVED HOLDING COMPANIES)
REGULATIONS 2005**

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In exercise of the powers conferred by sections 45, 81S and 81ZK 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 (Corporate Governance of Approved Exchanges, Approved Clearing Houses and Approved Holding Companies) Regulations 2005 and shall come into operation on 29th November 2005.

[S 462/2013 wef 01/08/2013]

Definitions

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

“associated corporation”, in relation to a corporation, means —

- (a) any corporation in which the first-mentioned corporation or its subsidiary has, or the first-mentioned corporation and its subsidiary together have, an interest in shares entitling the beneficial owners thereof the right to cast, whether by proxy or in person, not less than 20% but not more than 50% of the total votes able to be cast at a general meeting of the second-mentioned corporation; or
- (b) any corporation, other than a subsidiary of the first-mentioned corporation or a corporation which is an associated corporation by virtue of paragraph (a), the

policies of which the first-mentioned corporation or its subsidiary is, or the first-mentioned corporation together with its subsidiary are, able to control or influence materially;

“Audit Committee” means an Audit Committee referred to in regulation 14;

“Conflicts Committee” means a Conflicts Committee referred to in regulation 15;

“executive director” means a director who is concurrently an executive officer and “non-executive director” shall be construed accordingly;

“executive officer”, in relation to a corporation, means any person, by whatever name described, who —

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

(b) is concerned with, or takes part in, the management of the corporation on a day-to-day basis;

“immediate family”, in relation to an individual, means the individual’s spouse, child, adopted child, step-child, brother, sister, parent or step-parent;

“independent director”, in relation to a regulated institution, means a director who is —

(a) independent from any management and business relationship with the regulated institution; and

(b) independent from any substantial shareholder of the regulated institution;

“member” —

(a) in relation to an approved exchange or an approved clearing house, has the same meaning as in section 2 of the Act; and

[S 462/2013 wef 01/08/2013]

(b) in relation to an approved holding company, means a person who holds membership of any class or

description in an approved exchange or an approved clearing house of which the approved holding company is the holding company;

[S 462/2013 wef 01/08/2013]

“Nominating Committee” means a Nominating Committee referred to in regulation 9;

“regulated institution” means an approved exchange, an approved clearing house or an approved holding company;

[S 462/2013 wef 01/08/2013]

“Remuneration Committee” means a Remuneration Committee referred to in regulation 13.

(2) In these Regulations, in relation to a company which may dispense with the holding of annual general meetings under section 175A of the Companies Act (Cap. 50) —

- (a) a reference to the doing of anything at an annual general meeting of the company shall be read as a reference to the doing of that thing by way of a resolution by written means in accordance with the Companies Act; and
- (b) a reference to the date of an annual general meeting of the company shall, unless the meeting is held, be read as a reference to the date of expiry of the period within which the meeting is required by law to be held.

PART II

GOVERNANCE OF REGULATED INSTITUTIONS

Independence from management and business relationships

3.—(1) In these Regulations, subject to regulation 5, a director shall be considered to be independent from management and business relationships with a regulated institution if —

- (a) the director has no management relationship with the regulated institution or any of its subsidiaries; and

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- (b) the director has no business relationship with the regulated institution or any of its subsidiaries, or with any officer of the regulated institution,

that could interfere, or be reasonably regarded as interfering, with the exercise of the director's independent business judgment with regard to the interest of the regulated institution.

(2) Without prejudice to paragraph (1)(a), a director shall not be considered to be independent from management relationships with a regulated institution or any of its subsidiaries if —

- (a) he is employed by the regulated institution or any of its subsidiaries, or has been so employed at any time during the current financial year or any of the preceding 3 financial years of the regulated institution or any of its subsidiaries;

- (b) any member of his immediate family —

(i) is employed by the regulated institution or any of its subsidiaries as an executive officer whose compensation is determined by the Remuneration Committee of the regulated institution or any of its subsidiaries; or

(ii) has been so employed at any time during the current financial year or any of the preceding 3 financial years of the regulated institution or any of its subsidiaries; or

- (c) he is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the management of the regulated institution or any of its subsidiaries.

(3) Without prejudice to paragraph (1)(b) but subject to regulation 5, a director shall not be considered to be independent from business relationships with a regulated institution or any of its subsidiaries if —

- (a) he is a director, a substantial shareholder or an executive officer of any corporation, or a partner of a firm or a limited

liability partnership or a sole proprietor, where such corporation, firm, limited liability partnership or sole proprietor carries on business for purposes of profit to which the regulated institution or any of its subsidiaries has made, or from which the regulated institution or any of its subsidiaries has received, substantial payments in the current or immediately preceding financial year;

- (b) he is receiving or has received, any compensation from the regulated institution or from any of its subsidiaries, other than compensation received for his services as a director or as an employee, at any time during the current or immediately preceding financial year of the regulated institution;
- (c) he is a director or a substantial shareholder of a corporation which is —
 - (i) a member of; or
 - (ii) a related corporation of a member of,the regulated institution or any of its subsidiaries;
- (d) he is employed by, is receiving or has, at any time during the current or immediately preceding financial year of the regulated institution, received any compensation from a corporation which is —
 - (i) a member of the regulated institution;
 - (ii) a related corporation of a member of the regulated institution;
 - (iii) a member of a subsidiary of the regulated institution;
or
 - (iv) a related corporation of a member of a subsidiary of the regulated institution,

and, in the case referred to in sub-paragraph (ii) or (iv), he is responsible for or engages in the activities of the member; or

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- (e) any member of his immediate family is —
- (i) a director or a substantial shareholder of a corporation which is a member of —
 - (A) the regulated institution; or
 - (B) any of the subsidiaries of the regulated institution; or
 - (ii) employed by a corporation which is a member of —
 - (A) the regulated institution; or
 - (B) any of the subsidiaries of the regulated institution,
as an executive officer whose compensation is determined by the Remuneration Committee of that corporation.

(4) For the purposes of paragraph (3)(a), “payments” does not include payments for transactions involving standard services with published rates, or for routine or retail transactions or relationships, unless special or favourable treatment is accorded.

Independence from substantial shareholder

4.—(1) In these Regulations, subject to regulation 5, a director of a regulated institution shall be considered to be independent from a substantial shareholder of the regulated institution if he is not that substantial shareholder and is not connected to that substantial shareholder.

(2) For the purposes of paragraph (1), a person is connected to a substantial shareholder if he is —

- (a) in the case where the substantial shareholder is an individual —
 - (i) a member of the immediate family of the substantial shareholder;
 - (ii) employed by the substantial shareholder;
 - (iii) a partner of a firm or a limited liability partnership of which the substantial shareholder is also a partner; or

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- (iv) accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder;
or
 - (b) in the case where the substantial shareholder is a corporation —
 - (i) employed by the substantial shareholder;
 - (ii) employed by a subsidiary or an associated corporation of the substantial shareholder;
 - (iii) a director of the substantial shareholder;
 - (iv) a director of a subsidiary or an associated corporation of the substantial shareholder;
 - (v) a partner of a firm or a limited liability partnership of which the substantial shareholder is also a partner; or
 - (vi) accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder.

Determination by Nominating Committee

5.—(1) The Nominating Committee of a regulated institution may determine that a director of the regulated institution who is —

- (a) not considered independent from management or business relationships with the regulated institution under regulation 3(2) or (3), respectively; or
- (b) not considered independent from a substantial shareholder of the regulated institution because of any relationship specified in regulation 4(2),

shall nonetheless be considered independent from management and business relationships with the regulated institution, or independent from a substantial shareholder of the regulated institution, as the case may be, if the Nominating Committee is satisfied that the director's independent business judgment and ability to act in the interest of the regulated institution will not be impeded, despite the relationships specified in that regulation.

(2) If —

- (a) at any time, the Authority is not satisfied that a director is independent notwithstanding any determination of the Nominating Committee made under paragraph (1); and
- (b) the lack of independence of that director would result in a failure to comply with any of the requirements under regulation 6(1), 7, 9(1), 13(1), 14(1) or 15(1),

the Authority shall direct the regulated institution to rectify the composition of the board of directors or any relevant committee in accordance with the requirements under regulation 6(1), 7, 9(1), 13(1), 14(1) or 15(1), as the case may be, within such time, and subject to such conditions or restrictions, as the Authority may specify.

(3) Where the Authority has given a direction to a regulated institution under paragraph (2), the requirements under regulation 6(1), 7, 9(1), 13(1), 14(1) or 15(1), as the case may be, shall not apply to the regulated institution during the period between the time the Authority makes the direction and the time by which the regulated institution is required to rectify the composition of the board of directors or any relevant committee in accordance with the direction.

Board of directors

6.—(1) Subject to paragraphs (2), (3) and (4) and regulations 5(3) and 18, a regulated institution shall have a board of directors comprising —

- (a) at least a majority of directors who are independent from management and business relationships with the regulated institution;
- (b) at least one-third of directors who are independent directors; and
- (c) at least a majority of directors who are independent from any single substantial shareholder of the regulated institution.

(2) Where a single substantial shareholder holds 50% or more of the share capital or the voting power in a regulated institution, paragraph (1)(c) shall not apply to the regulated institution in respect of the independence of its directors from that substantial shareholder.

(3) If a member of the board of directors resigns or ceases to be a member of the board of directors for any other reason, the regulated institution shall —

- (a) notify the Authority of the event within 14 days of the occurrence of the event; and
- (b) on or before its next annual general meeting, appoint such number of new directors as may be necessary to rectify the composition of the board of directors in accordance with the requirements prescribed under paragraph (1).

(4) Notwithstanding paragraph (3), the Authority may, upon being notified under paragraph (3)(a), direct the regulated institution to rectify the composition of the board of directors in accordance with the requirements under paragraph (1) within such time before the next annual general meeting of the regulated institution and subject to such conditions or restrictions as the Authority may specify, and the regulated institution shall comply with that direction.

(5) The board of directors shall maintain records of all its meetings.

Executive Committee

7. Where the board of directors of a regulated institution has delegated any of its powers for the oversight of the regulated institution to an executive committee or any other committee by whatever name described (referred to in these Regulations as an Executive Committee), consisting of such directors as the board of directors thinks fit, regulation 6 (other than regulation 6(1)(a)) shall apply, with the necessary modifications, to the regulated institution in respect of the Executive Committee as if the Executive Committee were a board of directors.

Committees of board of directors

- 8.** A regulated institution shall have —
- (a) a Nominating Committee;
 - (b) a Remuneration Committee;
 - (c) an Audit Committee; and
 - (d) a Conflicts Committee.

Nominating Committee

9.—(1) Subject to paragraphs (2) and (5) and regulations 5(3) and 18, a regulated institution shall have a Nominating Committee comprising —

- (a) at least 5 members of the board of directors of the regulated institution;
- (b) at least a majority of directors (including the chairman of the Nominating Committee) who are independent from management and business relationships with the regulated institution;
- (c) at least one-third of directors who are independent directors; and
- (d) at least a majority of directors who are independent from any single substantial shareholder of the regulated institution.

(2) Where a single substantial shareholder holds 50% or more of the share capital or the voting power in a regulated institution, paragraph (1)(d) shall not apply to the regulated institution in respect of the independence of its directors from that substantial shareholder.

(3) A regulated institution shall obtain the prior approval of the Authority for the appointment of the chairman and members of the Nominating Committee.

(4) Every member of the Nominating Committee shall be appointed to hold office until the next annual general meeting following that member's appointment, and shall be eligible for re-appointment.

(5) If a member of the Nominating Committee resigns, ceases to be a director or for any other reason ceases to be a member of the Nominating Committee and this results in a breach of any requirement prescribed under paragraph (1), the board of directors shall, within 3 months of that event, appoint such number of new members as may be necessary to rectify the composition of the Nominating Committee in accordance with that requirement.

Responsibilities of Nominating Committee

10.—(1) The Nominating Committee of a regulated institution shall identify the candidates and review all nominations for the appointment of —

- (a) each director;
- (b) each member of each board committee (including the Executive Committee, if any); and
- (c) the chief executive officer, deputy chief executive officer and chief financial officer,

of the regulated institution.

(2) Subject to paragraph (3), the Nominating Committee shall determine the criteria to be applied in identifying a candidate or reviewing a nomination for the purposes of these Regulations.

(3) The criteria to be applied in identifying a candidate or reviewing a nomination for the purposes of these Regulations shall include the following:

- (a) the appointment of the candidate or nominee will not result in non-compliance with the requirements under regulations 6(1), 7, 9(1), 13(1), 14(1) and 15(1); and
- (b) the candidate or nominee is a fit and proper person for the office and is qualified for the office, taking into account the candidate's or nominee's track record, age, experience, capabilities and such other relevant factors as may be determined by the Nominating Committee.

(4) The Nominating Committee shall maintain records of all its meetings.

Determination of independence of directors

11.—(1) Where a person is proposed to be appointed as a director, prior to his appointment, the Nominating Committee —

(a) shall determine —

(i) whether he is independent from management and business relationships with the regulated institution; and

(ii) whether he is independent from any substantial shareholder of the regulated institution,

using the criteria set out in regulation 3 or 4, as the case may be, and, where applicable, in accordance with regulation 5; and

(b) shall maintain a record of its determination.

(2) Prior to every annual general meeting of a regulated institution, the Nominating Committee —

(a) shall determine —

(i) whether each existing director is independent from management and business relationships with the regulated institution; and

(ii) whether each existing director is independent from any substantial shareholder of the regulated institution,

using the criteria set out in regulation 3 or 4, as the case may be, and, where applicable, in accordance with regulation 5; and

(b) shall maintain a record of its determination.

Furnishing information to Authority

12. A regulated institution shall, after its Nominating Committee has concluded its deliberations in respect of the matters under regulations 10 and 11 and the board of directors has concurred with the Nominating Committee —

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- (a) notify the Authority in writing of the particulars of the persons proposed to be appointed to the Remuneration Committee, Audit Committee or Executive Committee, as the case may be, including whether the requirements for independence in regulations 3 and 4 are satisfied;
 - (b) in the case where the Nominating Committee has made a determination under regulation 5, provide the Authority with the Nominating Committee's explanation of its decision as to why the director should be considered independent; and
 - (c) furnish to the Authority such other information as the Authority may require.

Remuneration Committee

13.—(1) Subject to paragraphs (3), (6) and (7) and regulations 5(3) and 18, a regulated institution shall have a Remuneration Committee comprising —

- (a) at least 3 members of the board of directors of the regulated institution, all of whom satisfy the requirements set out in paragraph (2);
- (b) at least a majority of directors (including the chairman of the Remuneration Committee) who are independent from management and business relationships with the regulated institution;
- (c) at least one-third of directors who are independent directors; and
- (d) at least a majority of directors who are independent from any single substantial shareholder.

(2) The requirements referred to in paragraph (1)(a) to be satisfied by a director are that —

- (a) the matters referred to in regulation 3(3)(c), (d) and (e) do not apply to him; or
- (b) if any matter referred to in regulation 3(3)(c), (d) or (e) applies to him —

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- (i) the Nominating Committee of the regulated institution has determined under regulation 5(1) that he shall nonetheless be considered independent from management and business relationships with the regulated institution; and
 - (ii) the Authority has not given a direction under regulation 5(2) in relation to his appointment to the Remuneration Committee.

(3) Where a single substantial shareholder holds 50% or more of the share capital or the voting power in a regulated institution, paragraph (1)(d) shall not apply to the regulated institution in respect of the independence of its directors from that substantial shareholder.

(4) In addition to such other responsibilities as may be determined by the board of directors of a regulated institution, the Remuneration Committee of the regulated institution shall be responsible for recommending —

- (a) a framework for determining the remuneration of directors and executive officers of the regulated institution; and
- (b) the remuneration of each executive director and the chief executive officer of the regulated institution.

(5) The Remuneration Committee shall maintain records of all its meetings.

(6) If a member of the Remuneration Committee resigns, ceases to be a director or for any other reason ceases to be a member of the Remuneration Committee and this results in a breach of any requirement under paragraph (1), the board of directors shall, within 3 months of that event, appoint such number of new members as may be necessary to rectify the composition of the Remuneration Committee in accordance with that requirement.

(7) Where before 29th November 2005, a regulated institution has appointed, as the chairman of its Remuneration Committee, any person who is not independent from management and business relationships with the regulated institution, the regulated institution shall not be prohibited from re-appointing that person as chairman of

its Remuneration Committee immediately upon the expiry of the earlier term of appointment.

Audit Committee

14.—(1) Subject to paragraph (4) and regulations 5(3) and 18, a regulated institution shall have an Audit Committee comprising —

- (a) at least 3 members of the board of directors of the regulated institution, all of whom are independent from management and business relationships with the regulated institution; and
- (b) at least a majority of directors (including the chairman of the Audit Committee) who are independent directors.

(2) The Audit Committee shall, in addition to such other responsibilities as may be determined by the board of directors or provided under written law, be responsible for the adequacy of the external and internal audit functions of the regulated institution, including reviewing the scope and results of audits carried out in respect of the operations of the regulated institution and the independence and objectivity of the regulated institution's external auditors.

(3) The Audit Committee shall maintain records of all its meetings.

(4) If a member of the Audit Committee resigns, ceases to be a director or for any other reason ceases to be a member of the Audit Committee and this results in a breach of paragraph (1), the board of directors shall, within 3 months of that event, appoint such number of new members as may be necessary to rectify the composition of the Audit Committee in accordance with that requirement.

Conflicts Committee

15.—(1) Subject to paragraph (4) and regulations 5(3) and 18, a regulated institution shall have a Conflicts Committee comprising —

- (a) at least 3 members of the board of directors of the regulated institution, all of whom are independent from management and business relationships with the regulated institution; and

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- (b) at least a majority of directors (including the chairman of the Conflicts Committee) who are independent from any substantial shareholder.

(2) A regulated institution shall obtain the prior approval of the Authority for the appointment of the chairman and members of the Conflicts Committee.

(3) In addition to such other responsibilities as may be determined by the board of directors of a regulated institution, the Conflicts Committee shall be responsible for —

- (a) reviewing the adequacy of the arrangements within the regulated institution and its subsidiaries for dealing with any perceived or actual conflict between any of the following:

(i) the interests arising from the regulation and supervision of —

(A) the members of the regulated institution and its subsidiaries; and

(B) the relevant corporations of the regulated institution;

(ii) the commercial interests of the regulated institution or any of its subsidiaries,

including any conflict of interests or potential conflict of interests arising as a result of the listing of the shares of the regulated institution on any organised market operated by the regulated institution or any of its subsidiaries; and

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- (b) carrying out regular reviews of the adequacy of the plans, budget and resources of the regulated institution and its subsidiaries in relation to the regulation and supervision of —

(i) the members of the regulated institution and its subsidiaries; and

(ii) the relevant corporations of the regulated institution,

and reporting to the board of directors if it is of the view that insufficient funding and resources are being devoted by the regulated institution or its subsidiary, as the case may be, to the supervision of the members, their subsidiaries and the relevant corporations.

(4) If a member of the Conflicts Committee resigns, ceases to be a director or for any other reason ceases to be a member of the Conflicts Committee and this results in a breach of any requirement under paragraph (1), the board of directors shall, within 3 months of that event, appoint such number of new members as may be necessary to rectify the composition of the Conflicts Committee in accordance with that requirement.

(5) In paragraph (3), “relevant corporations” —

(a) in relation to a regulated institution which is an approved exchange, means corporations whose securities are listed for quotation on an organised market operated by the approved exchange or any of its related corporations; and

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(b) in relation to a regulated institution which is an approved clearing house or an approved holding company, means corporations whose securities are listed for quotation on an organised market operated by any of the related corporations of the approved clearing house or approved holding company, as the case may be.

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Separation of roles

16.—(1) Subject to paragraph (2), a regulated institution shall not appoint any of its executive directors as the chairman of the board of directors.

(2) Where before 29th November 2005, a regulated institution has appointed as the chairman of its board of directors, any person who is an executive director of the regulated institution, and that person holds both the appointments of chairman and executive director

concurrently immediately before that date, the regulated institution —

- (a) shall not be required to revoke that person's appointment as chairman or as executive director; and
- (b) shall not be prohibited from re-appointing that person as chairman or as executive director for so long as that person does not cease to hold both the appointments of chairman and executive director concurrently.

Exemption

17.—(1) The Authority may, on the application of a regulated institution, by notice in writing exempt the regulated institution from all or any of the provisions of these Regulations, subject to such conditions or restrictions as the Authority may determine, if the Authority considers it appropriate to do so in the circumstances of the case.

(2) In the case where the holding company of any regulated institution is itself an approved holding company which complies with all requirements under these Regulations, the Authority may exempt the regulated institution from all or any of the requirements under these Regulations, subject to such conditions or restrictions as the Authority may determine.

(3) The regulated institution shall comply with the conditions and restrictions imposed on it under paragraph (1) or (2).

Exceptions

18.—(1) Subject to paragraphs (2) and (3), the requirements under regulations 6(1), 7, 9(1), 13(1), 14(1) and 15(1) shall not apply in relation to a regulated institution —

- (a) where —
 - (i) there is a change in status of a director under regulation 3 or 4 during the period between the date immediately after the date of the director's appointment and the date immediately before the

next annual general meeting of the regulated institution; and

- (ii) the regulated institution could not reasonably have known of that change on or before the date of the director's appointment; or

(b) where —

- (i) there is a change in status of a director under regulation 3 or 4 during the period between the date immediately after an annual general meeting of the regulated institution and the date immediately before the next annual general meeting of the regulated institution (other than the period referred to in sub-paragraph (a)(i)); and
- (ii) the regulated institution could not reasonably have known of that change on or before the date of the first-mentioned annual general meeting.

(2) Paragraph (1) shall not apply unless, in the circumstances referred to in paragraph (1)(a)(i) and (b)(i), the regulated institution, within 14 days of becoming aware of the change in status of the director, notifies the Authority of the change and, subject to paragraph (3) —

- (a) in respect of any requirement under regulation 6(1), at the next annual general meeting, appoints such number of new directors as may be necessary to rectify the composition of the board of directors in accordance with that requirement; or
- (b) in respect of any requirement under regulation 7, 9(1), 13(1), 14(1) or 15(1), within 3 months of notifying the Authority of the change of status of the director, appoints such number of new members as may be necessary to rectify the composition of the relevant committee in accordance with that requirement.

(3) Notwithstanding paragraph (2), the Authority may, upon being notified of a change in status of a director under paragraph (2), direct the regulated institution —

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- (a) to appoint such number of new directors as may be necessary to rectify the composition of the board of directors in accordance with the requirements under regulation 6(1) within such time before the next annual general meeting of the regulated institution and subject to such conditions or restrictions as the Authority may specify; or
- (b) to appoint such number of new members as may be necessary to rectify the composition of the relevant committee in accordance with the requirements under regulation 7, 9(1), 13(1), 14(1) or 15(1), as the case may be, within such time before the expiration of 3 months from the date the regulated institution notifies the Authority of the change and subject to such conditions or restrictions as the Authority may specify.

(4) The regulated institution shall comply with the direction under paragraph (3).

Offences

19.—(1) Any regulated institution which contravenes regulation 6(1) or (4), 8, 9(1), 12, 13(1), 14(1), 15(1), 16(1), 17(3) or 18(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

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

PART III

SAVINGS AND TRANSITIONAL PROVISION

Savings and transitional provision

20. These Regulations shall not apply to any regulated institution for the period from 29th November 2005 to the date on which the annual general meeting of the regulated institution is held in 2007.

Made this 17th day of November 2005.

HENG SWEE KEAT
Managing Director,
Monetary Authority of Singapore.

[MCH 014/2005 Vol. 1; AG/LEG/SL/289/2005/16 Vol. 1]